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Introduction

"We live in a time in which we are confronted with difficult and, perhaps, even puzzling questions concerning the destiny of the world, the future of the human race.

"Today world nations are interdependent, like mountain climbers attached to one rope. They can either climb together to the summit or all fall into the abyss. To prevent this from happening, political leaders must rise above narrow-minded considerations and realise how dramatic the contemporary situation is. This underscores the vital need for a new way of political thinking in the nuclear age."[1]

The new realities of the nuclear age compel us to reconsider the role to be played by international law in developing a new way of thinking, ensuring peace, and providing favourable conditions for the development of each nation and each individual.

First of all, it should be emphasized that the nature of modern weapons makes it impossible for any country to defend itself by means of military technology alone. Therefore, ensuring security is increasingly becoming a political objective and can be reached only by political means and the means at the disposal of international law. This raises the role of international law and creates the need to master all forms and mechanisms of regulating relations under international law. However, security can no longer rely on the doctrines of containment or deterrence, which are based on the fear of retaliation, because these doctrines only encourage the arms race, which sooner or later is bound to get out of hand. However,

[1] Mikhail Gorbachev, "For a 'Common European Home', for a New Way of Thinking", Speech by the General Secretary of the CPSU Central Committee at the Czechoslovak-Soviet Friendship Meeting, Prague, April 10, 1987, Novosti Press Agency Publishing House, Moscow, 1987, p. 20.

the nations of the world have another option, that of universal disarmament.

Security can only be mutual and universal. Each nation must feel that it is as secure as its neighbours. Concern only for one's own interests, particularly at the expense of others, is by no means conducive to the solution of international problems and hence is not conducive to the development of any nation. The world is undergoing rapid change, and no one can expect to retain the status quo for any length of time. Every country pursues its own legitimate interests and every nation has the right to shape its own future according to its own desires if it does not encroach on the rights of other nations. In this context, all countries must learn to work out and apply universally recognized, democratic principles and rules of contemporary international law whose basic objective would be peace and peaceful coexistence of States with different socio-economic systems.

This approach is based on the realization that today it is no longer possible to win the arms race, just as it is impossible to win in a nuclear war. Pursuit of military superiority cannot, in the long run, give a political advantage to anyone. The level of armaments stockpiled by all the opposing parties puts them all at the equal risk of being annihilated, whereas equal security can be guaranteed only by a strategic balance at the lowest possible level—a balance which must exclude nuclear and all other weapons of mass destruction.

This approach is also based on the realization that such global problems as hunger, poverty, underdevelopment and economic crises can be resolved only through comprehensive international cooperation and the mechanism of international legal regulation in the interests of all nations. There is no alternative to cooperation between all countries other than international law as a common platform that would express the interests of all nations, the interests of mankind as a whole.

The concept of a comprehensive system of international security, advanced at the 27th Congress of the Communist Party of the Soviet Union, is based on the generally accepted principles and norms of international law. An important part in this system would be played by cooperation in the humanitarian field, without which a stable system of security is inconceivable.

The Soviet Union has advanced the idea of maximum humanization of international relations, since central to the new way of thinking is man, his development, his needs, his

life in peace and freedom, and his right to live and develop. The proclamation and ensurance of the basic human rights and freedoms based on international treaties and agreements is, as part of international cooperation in the humanitarian field, an important element in establishing a comprehensive system of international security. In practical terms, this means that in the process of working out international standards for human rights and freedoms and an international mechanism of cooperation in this field, all States are called upon to share their experiences in human development and promote the fullest possible exercise of human rights and freedoms on their territories. The USSR has on several occasions called upon its Western partners in the United Nations to stop using human rights and freedoms as objects of political speculation, which are constantly being employed in the USA and a number of Western countries as bargaining chips in political linkage, exerting pressure and engaging in recrimination. It has urged constructive cooperation in the common drive for democracy. One should realize that there exist different forms of democracy and that there is little use in trying to impose on other nations one's own way of life, one's own laws and vices and one's own inability to solve the problems of human development, rights and freedoms. At the same time, transition to a new way of thinking and realization of universal human values as a common platform for the development of man, will make it possible to work out a set of general standards on the basis of which one could resolve problems of human development in the concrete social and economic context of each particular country without outside interference. At the 42nd Session of the UN Commission on Human Rights, the USSR proposed discussing ways to combat racist, fascist and other ideologies based on the theory and practice of racial exclusiveness and intolerance, totalitarianism and terrorism. At the Commission's 43rd Session the Soviet delegation proposed discussing ways to work out a convention on the freedom of religious and other convictions, to discuss the problem of the homeless, the rights of native populations, the effectiveness of efforts to abolish torture, and the struggle against the recruitment of mercenaries. At the Vienna Conference of the Signatory States of the Helsinki Final Act, the Soviet delegation proposed that a representative forum be held in Moscow to review the entire range of humanitarian issues, including people-to-people contacts, information, culture and education.

The USSR's constructive foreign policy and the revolu-

tionary changes towards further democratization now under way in Soviet society have filled reactionary forces worldwide with dismay. It is obvious that the reluctance of certain Western political leaders to give up their old ways of thinking, to part with threadbare rhetorical stereotypes, and to recognize the situation as it exists, hampers the solution of humanitarian problems and jeopardizes international security in our nuclear age. More and more people, both in the West and in the East, are coming to realize this. This realization has been expressed in the setting up, on the initiative of political leaders and public personalities in a number of Western, Asian, African and Latin American countries, of an Independent Commission on International Humanitarian Issues headed by S. Aga Khan and Crown Prince Hassan of Jordan.

The Commission set itself the aim of defining the range of international humanitarian issues and proposing ways, means and mechanisms of international cooperation in dealing with them in the interests of development of nations and each individual. The Commission has prepared a report, which has been submitted for consideration to the United Nations, to other international organizations, and to all States.

What issues are today considered to be of an international humanitarian nature? Naturally, many international questions are related in one way or another to man's life and development. However, international humanitarian issues should also include those directly related to the survival of nations and individuals, although each, in itself, is an independent issue and should be dealt with separately. Yet they can be tackled only by the joint efforts of many states irrespective of their socio-economic systems. On the other hand, failure to resolve them would threaten the peace and security of many States and nations, and, ultimately, the survival of humanity itself.

What are the international humanitarian problems which confront humanity today and which can be tackled only by the joint efforts of all States? First of all, it should be emphasized that only prevention, and ultimately elimination from the life of society, of war as a means of settling international disputes, can provide conditions for the security of States and nations and guarantee man's right to live and develop in peace and freedom. Therein lies the humanitarian content of the struggle to end the arms race, eliminate weapons of mass destruction, above all nuclear weapons, that is, the struggle for survival and progress. This approach is based, in particular, on the UN Charter and the Declaration on the Enhancement of the Effectiveness

of the Principle of Refraining from the Threat or Use of Force in International Relations, which states, in part, that "every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and entails international responsibilities." A similar thought is contained in the Declaration on the Right to Development (adopted by the UN General Assembly in December 1986), which says, in part, that "international peace and security are essential elements for the realization of the right to development".

International humanitarian issues also include international legal settlement of armed conflicts and protection of their victims, because in all cases when armed conflicts break out, the object of the international community should be their utmost humanization, termination, and provision of assistance to their victims. In pursuing this policy, the international community has worked out the Geneva Conventions for the Protection of War Victims (August 12, 1949), Protocols Additional to These Conventions (1977), the Convention on Prohibition or Restriction of Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (1980), and other international legal instruments.

It is common knowledge that more than 500 million people in the world are suffering from malnutrition because of the insufficient production of food and its unequal distribution. This problem can be resolved only if food production is assured steady growth and if people have more equitable access to food supplies. Redistributing food supplies that could eliminate hunger and malnutrition would require mass redistribution of incomes and natural resources both between countries and within each nation. There has even appeared the concept of food security, and one international body dealing with this is the UN Food and Agriculture Organization (FAO). All this goes to show that the struggle against hunger is the struggle for man's survival and progress, and this problem can be resolved only if all countries unite their efforts and consider the interests of each and every nation.

Vital international humanitarian issues on which the survival of entire nations often depends, include prevention of eviction of the local population from its land, regardless of pretext, and the problem of refugees; protection of emigrés

and stateless persons; protection of children and, above all, resolving the problem of homeless children; and ensuring the right to work and eliminating unemployment.

According to UNICEF statistics, every day the world spends $3,000,000,000 on the senseless arms race, while at the same time every day 40,000 children die of hunger and preventable diseases; for every 100,000 of the world's population there are as many as 556 soldiers and only 86 doctors; the cost of one modern nuclear bomber is more than is needed to vaccinate all the new-born babies in the world. An acute problem in many countries is how to ensure the rights and development of the indigenous population and how to protect and conserve the artistic and cultural heritage of every nation, to guarantee their right to education and advancement of science.

Man's tremendous technological progress has created the need for all countries to make joint efforts to prevent its negative effects on the environment so as to ensure humanity's survival. The extermination of vast expanses of forest, especially tropical rain forests, and subsequent desertification, makes it imperative for the international community to find ways to stop this process and provide favourable conditions for man's survival and progress in these areas. Urgent action is needed in this field because deforestation and desertification have assumed disastrous proportions.

It has been calculated that today the world economy releases into the atmosphere an annual 200 million tons of carbon monoxide, more than 50 million tons of hydrocarbons, 120 million tons of ashes, and 150 million tons of sulphur dioxide. The latter get back at us in the form of acid rain, which is gradually destroying the forests in Europe. Another terrifying fact is the inexorable southward advance of the Sahara, which has already destroyed 5 billion hectares of fertile land—one hectare for each inhabitant of our planet. To stop this process, concerted action is needed. The funds needed for this would not be so great—a mere $ 70 billion before the end of this century. These funds could be easily released if man were to stop the arms race, which, given its present rate, will rob the nations of the world of another $ 15 trillion before the year 2000.

Finally, another group of international humanitarian issues facing all nations today and demanding joint research and concerted action is the need to combat disease, drug addiction and drug trafficking. Health protection today is undeniably an international humanitarian problem. And from the point of

view of man's progress and well-being, his relationship and interdependence with the environment is of paramount importance and ultimately determines the living standards and quality of life of entire nations. For instance, the problem of "ecological regufees" migrating from country to country to escape deteriorating environmental conditions with their inevitably high rates of disease and mortality can be resolved only through international cooperation.

Another international humanitarian problem is combating international terrorism. Terrorism not only takes the lives of innocent people, but destabilizes international relations and the internal situation in many countries, and is in fact a gross violation of human rights.

International humanitarian problems can be resolved only on the basis of universally accepted binding principles and rules of contemporary international law. In our view, it is important to work out a special code of interstate cooperation in the humanitarian field aimed at effective protection of human rights and establishing reliable material guarantees for satisfying man's needs.

This proposal is consonant with the one made by Jordan in the UN on establishing a new international humanitarian order.[1] Although Jordan's proposal was not exhaustive and did not provide specific recommendations, the very fact that the question was brought up and drew a favourable response is encouraging and deserves full support. It is important to work out an acceptable international mechanism for examining humanitarian problems and coordinating efforts to resolve them on the basis of concerted action by all States regardless of what socio-economic system they belong to, and to elaborate generally acceptable principles of interstate relations for cooperation in this field. International humanitarian problems should be viewed together, not in isolation, since they are all closely connected in the system of international security, and both the security of each particular nation and international security largely depend on how successfully we solve these problems.

We believe the following general principles should form the basis of a code of international cooperation in humanitarian issues:

(1) respect for the right of each nation to self-determination, i.e. the right to decide its own future without any outside interference;

[1] See: UN General Assembly Doc. A/41/472 of 1 August 1986.

(2) mutual security;

(3) cooperation between all States, irrespective of their socio-economic system, in searching for solutions to global problems;

(4) cooperation between all States in disseminating the ideas of peace, disarmament, and respect for human rights and freedoms;

(5) promoting the dissemination of objective information, and improving the quality of such information, about each nation's way of life in order to promote international confidence, understanding and agreement;

(6) obligations assumed by each State to promote cooperation between political parties, social movements, prominent figures in art and culture, and the mass media, promotion of tourism, and development of contacts between individuals and organizations;

(7) banning any kind of discrimination against individuals or nations; eradicating genocide and apartheid; prohibiting the advocacy of fascism or any other form of racial, national, religious or other exclusiveness.

If and when such a code is adopted, it will present a number of practical issues for improving the machinery of existing international organizations (those bodies within them which deal with humanitarian issues), coordinating their efforts, and evolving new international mechanisms to resolve specific problems. Obviously, each country will find its own solution to each particular international humanitarian problem as it applies to its specific local conditions. However, such decisions must not contradict those countries' obligations under regional or universal international treaties inasmuch as a particular international humanitarian problem affects the interests, rights and freedoms of people in other countries. Underlying this approach to international cooperation in the humanitarian field is genuine humanism, that is, unity of human ideals worldwide, unity of democratic and peaceful aspirations of all social strata acting in defense of man's interests, common to all mankind, in defense of civilization.

Proceeding from this and basing itself on the need to introduce a new way of thinking in the international community and to take international humanitarian action, the Independent Commission on International Humanitarian Issues stressed the need to organize a new international social movement, a movement for a global system of security and human development.

Its objectives can be accomplished within a comprehensive system of international security, aimed at resolving security problems in the military, political and economic fields.

In accomplishing these aims, international humanitarian actions should be combined with the promotion of cooperation between States with different socio-economic systems.

International humanitarian actions are, above all, actions by States, intergovernmental and non-governmental organizations to help and protect individuals and groups of people against the threat of destruction. Moreover these actions seek to provide better conditions for the development of individuals or groups of people in conditions of peace and freedom. International humanitarian actions would be impossible without inter-State cooperation based on the rule of international law. The basis and prime condition of international rule of law is strict observance of international law, above all its universally recognized principles and standards. International rule of law arises from international legal regulation, which includes establishment of legal standards, their observance, and safeguarding.

The principles and standards guiding international humanitarian actions, which are mandatory for everyone performing such actions, must reflect the objective need to tackle international humanitarian problems, on the one hand, and the actual possibilities of regulating international relations, on the other. Only thus can these international legal standards be considered optimal and effective.

In working out a code of international cooperation on humanitarian problems and proceeding from general principles one should start, in our opinion, with regional cooperation, making use of the existing regional organizations, especially in the field of international humanitarian actions.

Of paramount importance should be the principle of respect for the sovereignty of and non-interference in the internal affairs of the State on whose territory international humanitarian actions are performed. Otherwise, these actions would not be effective or would even become the object of abuse: far from resolving a particular problem, such actions would create new obstacles to its solution, being in fact directed against the interests of an individual or a group of people. The code of international cooperation in humanitarian problems will actively promote the development of new political thinking. It is a question of universalizing and deepening an international legal awareness based on common international law

and the universal character of international rule of law. This new international legal awareness, which will be common to all States, comprises a system of new views and concepts of international law and its application, which express the will of the general public and, in fact, the interests of all nations. In this sense, the establishment of a new international humanitarian order will inevitably lead to the establishment of a new international legal order based on respect for individuals and nations regardless of their ideology or social faith. This would, in turn, result in a system of international law purged of double standards, a system that would unconditionally outlaw wars of aggression and all other forms of international violence.

Evidently, under such an international legal order, all States irrespective of their socio-economic systems, would be faced with the need to find an effective way to equitably distribute material wealth among all the nations on our planet. In this context, the solution of international humanitarian problems is of special importance for the developing countries, whose population today exceeds two billion people and where per capita income is one-eleventh of that in the former parent States. Moreover, the gap is still growing every year. Only worldwide constructive cooperation of all States and nations can solve this problem, just as any other problem where human life and progress directly depend on the concerted actions of States and nations. The international community needs a new international legal order, which would be based on common human values, on generally recognized democratic principles and standards of conduct of States in international relations. This new international legal order would be based on peace, peaceful coexistence, inter-State cooperation, and settlement of disputes by peaceful means. Evidently, such an international legal order should centre upon man and be directed at his protection and harmonious development, with a special role played by international humanitarian law as a branch of contemporary international law.

A code of international cooperation on humanitarian issues will clearly constitute an important part of this new international legal order.

Another important element of a new international legal order should be the unconditional renunciation of the use of force under any pretext and in any form. This should lead to trust and understanding, which must be ensured through a system of international legal principles and standards recorded in international agreements. The UN International Law

Commission should complete the drafting of a Convention on the Responsibility of States and of a Code of Offenses Against the Peace and Security of Mankind, and should also accord special attention to the drafting an international convention on sanctions for violation of international legality, a convention on the regime of international supervision, and a convention on international cooperation mechanisms. It is obvious that political and economic independence of each State should be recognized as a fundamental principle in international law and should be expressed in a comprehensive system of international security. Another important element of the new international legal order should be the principle of cooperation and the setting up of a mechanism for resolving global problems.

Another important element of the new international legal order is the principle of development, the right of self-determination and development based on disarmament and release of funds for the development of every nation.

Finally, it should be emphasized that the establishment of a new international legal order should begin with immediate action in the field of disarmament, first of all with concluding an international convention on prohibiting the use or the threat of use of nuclear weapons; an agreement on eliminating nuclear arsenals by the end of this century, on non-proliferation of all types of weapons in outer space, which is the common heritage of mankind; an agreement on banning nuclear weapons tests; an agreement on banning and eliminating chemical weapons; and an agreement on lowering the levels of conventional armaments and armed forces.

Today mankind faces a difficult dilemma: either to set up a new international legal order based on a new political thinking, or to destroy all life on earth.

The vast majority of people have chosen the first option and support the establishment of a new international legal order in the interests of all nations.

Chapter I

The Concept of International Humanitarian Law

At present, the international community has evolved a set of principles and rules of inter-State cooperation in providing favourable conditions for every individual to enjoy the fundamental rights and freedoms both in peacetime and in periods of armed conflict.

The set of principles and standards of contemporary international law effective in time of armed conflict stems from the desire of people everywhere to banish military conflicts from the life of society or at least to render them as humane as possible wherever they do occur. This group of treaty standards of international law appeared in the late 19th and early 20th century and was developed in the 1920s and especially in the period after World War II, when the world's correlation of forces tipped in favour of peace, democracy and socialism, substantially contributing to the limitation and banning of arbitrary rule in international relations. At the same time, after the defeat of fascism, a set of principles and standards began to develop in the field of human rights and freedoms in peacetime.

At present, however, the forces of world imperialism have pushed the arms race so far that it now presents a tangible threat to world peace. In this context, the principles and standards of international law affecting the efforts of States and the international public to stop the arms race and reduce armaments and armed forces are becoming increasingly important. At the same time, one cannot deny the right of nations fighting for self-determination and against colonial and other foreign domination, to wage armed struggle. In certain countries, internal armed conflicts may flare up. Finally, there is the problem of protecting human rights in the event of aggression. Today, the world continues to encounter systematic gross violations of human rights and freedoms on a mass scale. Thus,

concerted international action is needed to end these violations and establish a common democratic platform for all progressive forces in protecting human rights.

All this requires a clear-cut definition of principles and standards guiding the conduct of States and their officials in these concrete situations. In so doing, one must always bear in mind the principles of respect for national sovereignty, non-interference in internal affairs, and the right of nations to self-determination. The basic principles of international relations today should be disarmament and prohibition of wars of aggression as an instrument of foreign policy.

§ 1. Sources of International Humanitarian Law

The sources of international humanitarian law are above all the generally recognized fundamental principles of international law, the United Nations Charter, and the charters of specialized agencies of the United Nations.

At present, there exists a system of international treaties and agreements on human rights, which constitute the basic group of sources. These include: the International Convention on Economic, Social and Cultural Rights (1966), the International Convention on Civil and Political Rights (1966), the International Convention on the Elimination of all Forms of Racial Discrimination (1965), the Convention on the Suppression and Punishment of the Crime of Apartheid (1973), the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1968), the Convention for the Suppression of the Traffic in Persons (1950), the Convention on the Political Rights of Women (1953), a large group of conventions on labour and employment adopted by the International Labour Organization (ILO), and conventions on the right to education adopted by UNESCO.

The urgent need to develop a system for protecting human rights in wartime arose as a result of continuing human rights violations in numerous armed conflicts. In this connection, the International Conference on Human Rights (Teheran, May 1968), adopted a resolution requesting the UN General Assembly to consider measures to improve the application of existing international humanitarian conventions and rules to all armed conflicts. The resolution contain-

ed a proposal to draft a number of new international humanitarian conventions or to review existing ones in order to improve the protection of civilians, prisoners of war and participants in all armed conflicts and also to prohibit or restrict the use of certain methods and means of warfare.

Since that time, the United Nations had undertaken appropriate research and the UN Secretariat has prepared a number of reports on problems related to the protection of human rights in armed conflicts.[1]

The International Committee of the Red Cross also did research on these problems, organizing a number of consultations and expert conferences.

In September 1970, a Congress on International Humanitarian Law was held at San Remo, Italy. It stressed the need to set up a research institute on international humanitarian law which would take up, among other things, the problems of protecting human rights in wartime. Between 1971 and 1976, the International Committee of the Red Cross organized several conferences of governmental experts on supplementing and developing the Geneva Conventions of 1949. For example, between 1974 and 1977, Geneva hosted a diplomatic conference on international humanitarian law, which adopted two Protocols Additional to the Geneva Conventions on the Protection of the Victims of International (I) and Non-international (II) Armed Conflicts.[2]

In the event of an armed conflict, the question arises of establishing an effective system for protecting human rights, which must be considered together with a whole group of other questions, such as the admissible methods and means of warfare and types of weapons. A fair amount of progress has already been made in this field, specifically with the conclusion of several international treaties and agreements which are bind-

[1] UN General Assembly Documents A/7720, 30: "Respect for Human Rights in Armed Conflicts"; A/8052, 18: "Respect for Human Rights in Armed Conflicts".

[2] See, for example, G. Herczegh, "Recent Problems of International Humanitarian Law", in: *Questions of International Law*, Leiden, Sijthoff, Budapest, Akad. Kladó, 1978; G. Herczegh, "Protocol Additional to the Geneva Conventions on the Protection of the Victims of Non-International Armed Conflicts", in: *Questions of International Law*, Vol. 2, Budapest, Akad. Kladó, 1979; F. Kalshoven, *The Law of Warfare*, Leiden, Sijthoff, 1973, A. Cassese, "Current Trends in the Development of the Law of Armed Conflicts", *Revista trimastrarle di dirritto publico*, No. 4, 1974; I. P. Blishchenko, "Armed Conflict and International Law", *Sovetskoye gosudarstvo i pravo* (Soviet State and Law), No. 11, 1979; A. Cassese, Ed., *The New Humanitarian Law of Armed Conflict*, Napoli, Ed. Scientifica, 1979.

ing on all States taking part in international relations. These include, above all, the Hague Conventions Respecting the Laws and Customs of War on Land (1898 and 1907), the Geneva Protocol on Gas and Bacteriological Warfare (1925), and the Geneva Conventions for the Protection of War Victims (1949).

This group of international legal principles and standards was and still is applied both during armed conflicts and under postwar occupation. Needless to say, all States must proceed in their actions from the binding nature of existing international treaties and agreements to which they are signatories. It would be a great mistake if a different point of view prevailed, whether under the pretext of new conditions, the need to strengthen national defense, or the extension of already existing obligations in this field.

The development of international relations and recent technological advances have considerably altered the conditions of armed conflict, engendering new problems of protecting human rights. The most striking example of this is the development of new types of weapons of mass destruction. Hence the need to amend existing international obligations in this field, and not to annul them, which would inevitably facilitate justification of arbitrary rule by an aggressor and of repression and terror inside a country during an internal armed conflict. All this was expressed in the Additional Protocols adopted at the Diplomatic Conference on International Humanitarian Law held in Geneva from 1974 to 1977. The year 1980 saw the adoption of a general Convention on Prohibitions or Restrictions of Use of Certain Conventional Weapons with three protocols: (1) on prohibiting the use of any weapons which produce non-detectable fragments, (2) on restricting the use of mines and prohibiting the use of booby traps and other devices which can hit civilians, and (3) on prohibiting or restricting the use of incendiary weapons.

All these documents constitute part of a special branch of international legal regulation—international humanitarian law—applicable during armed conflicts and post-war occupation.

Some scholars believe that the existing set of rules on respecting the laws and customs of war are all, in one way or another, meant to protect human rights and freedoms and therefore already constitute international humanitarian law. Professor Jean S. Pictet, former Vice President of the International Committee of the Red Cross, suggests his own system of inter-

national humanitarian law.[1] He believes that it should consist of two major branches: rules for waging war and rules for protecting human rights. He then subdivides the law of war into the Hague Conventions and the Geneva Conventions, which together constitute humanitarian law. The Hague Conventions also include the St. Petersburg Declaration of 1868, the Geneva Protocol of 1925, and the Geneva Conventions of 1929 on prisoners of war, wounded sailors, and the civilian population on occupied territories.

There is little doubt that this system has its merits. Today, however, given the ban on war as an instrument of foreign policy, it would be wrong to isolate the law of war from this branch of law and then to single out the Hague law (sometimes referred to as customary law).

Research done by the UN Human Rights Department, as well as international practice, suggest that in all events of military conflict the question arises of international protection of human rights which would cover both peacetime and wartime. In other words, the basic aim of the law of war is also protection of human rights. Therefore, it appears more logical to consider the principles and rules relating to the prohibition or restriction of certain types of weapons, means and methods of warfare in close connection with international laws on human rights and freedoms which oblige states to establish on their own territories political regimes based on freedom and democracy. In such conditions, the possibility of a certain State unleashing a war of aggression and using weapons of mass destruction is greatly restricted or ruled out altogether.[2]

Mention should be made of existing international legal principles and standards aimed at curbing the arms race and promoting disarmament. The international legal principle of disarmament implies the obligation of States to: strictly abide by and implement existing disarmament treaties; promote their universality; work for the early conclusion of new treaties directed at curbing the arms race, actual disarmament, elimination of the most dangerous types of mass destruction weapons, and limitation or prohibition of the most injurious types of

[1] See: Jean S. Pictet, *The Principles of International Humanitarian Law*, Geneva, ICRC 1966; *Le droit humanitaire et la protection des victimes de la Guerre*, Institute Henry-Dumant, Sijthoff, 1973.

[2] See: A. Eide, "The Laws of War and Human Rights—Differences and Convergences"; A. Robertson, "Humanitarian Law and Human Rights", in: *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of J. Pictet*, The Hague, Nijhoff, 1984.

weapons; work for general and complete disarmament, including nuclear disarmament, under strict international control.

This group of sources of international humanitarian law aims above all to protect and guarantee the most basic human right—the right to life, the right to peace and security, and the right to a healthy environment.

A few examples of international legal instruments in this field include the following: the Treaty for the Renunciation of War (1928), the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in the Outer Space and Under Water (1963), the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco, 1967), the Treaty on the Non-Proliferation of Nuclear Weapons (1963), the Treaty Between the USA and the USSR on the Limitation of Underground Nuclear Weapon Tests (1974), and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (1982).

This group of sources also includes international treaties and agreements on environmental protection. At the same time, this sphere of international legal regulation constitutes an independent area of international cooperation, just as the area of security and disarmament. It should be borne in mind, however, that the same international agreement can sometimes regulate a number of different areas of international relations. For example, the UN Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (1977) can be regarded as an instrument imposing restrictions in the event of armed conflict, as one protecting the environment, and also as one limiting armaments.

Thus it can be seen that international humanitarian law consists of three parts: (1) international legal standards regulating human rights and freedoms in peacetime; (2) international legal standards regulating basic human rights and freedoms during armed conflicts; and (3) legal standards curbing the arms race, banning or restricting the use of certain types of weapons, and promoting disarmament.[1]

[1] One point of view to be found in Western writings on the subject claims that human rights do not form part of international humanitarian law and have no relation to the law of armed conflicts. However, it is hard to agree with this view, and it was rejected by the United Nations (see: G. J. Draper, "The Relationship between Human Rights and the Law of Armed Conflicts". In: *Yearbook of Human Rights*, University of Tel Aviv, 1977.)

The application of international legal standards in armed conflicts is complicated by concrete situations. At present, however, this group of agreements is applicable to both international and non-international armed conflicts. To this category belong above all the Hague Conventions Respecting the Laws and Customs of War on Land (1899 and 1907), the Geneva Protocol on Gas and Bacteriological Warfare (1925), the Geneva Conventions for the Protection of War Victims (1949), the Protocols Additional to the Geneva Conventions (June 10, 1977), and the Convention on Prohibitions or Restrictions of Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (1980). These international legal instruments constitute a group of sources which, on the one hand, are recorded in appropriate treaties, but on the other hand, largely reflect the customs already existing in this field of international relations.

There is a point of view that at present, due to the difficulty of coming to terms on any particular rule of international conduct, customary standards of international law, which are just as binding, play a greater role. However, it is difficult to agree with this point of view since the customary standards of international law—for all their importance—cannot fully reflect the changes taking place today in the very nature of international relations or the dangerous trends which must be curbed in the interests of humanity. Thus, while conceding that the establishment of treaty rules requires considerable effort, it is our opinion that most attention should be devoted to reaching agreements, putting them into effect, and reviewing their implementation.

The treaty group of sources of international humanitarian law covers a fairly broad range of international treaties and agreements encompassing various fields of international relations. However, in each particular situation they deal with the need to safeguard human rights and freedoms and to provide favourable conditions for man's development.

As far as customary standards are concerned, an examination of their actual significance suggests that they play the most important role in that part of international humanitarian law which is devoted to the protection of human rights during armed conflicts. Indeed, this branch of international humanitarian law has a longer history and is more developed, and therefore custom has played a greater role there.

It is widely accepted that court rulings in international relations do not constitute a source of law. They do, however,

influence the development of contemporary international law by stating the existence or absense of a particular international legal standard. In a number of cases, court decisions have a great impact on the shaping of both general principles and concrete standards of international law in a particular field, and specifically the laws and customs of war. For example, in its resolution of 11 December 1946, the UN General Assembly confirmed the principles of international law laid down by the Charter of the Nürnberg Tribunal and expressed in its judgement. The resolution requested the Committee on the Codification of International Law to record them in the "general codification of offences against the peace and security of mankind", or in the International Criminal Code.

At the Second Session of the General Assembly (1947), the International Law Commission was instructed to draw up a draft Code of Offenses Against the Peace and Security of Mankind, stipulating the role to be played by the Nürnberg principles (Res. 177/II/). In 1954, the Commission submitted the Draft Code to the Ninth Session of the General Assembly, which, however, decided to postpone its discussion pending agreement on a precise definition of aggression (Res. 877/IX/).

It should be emphasized that the Nürnberg principles, which were expressed in the court's decision, contributed to expanding the list of *corpus delicti* incurring international criminal responsibility and helped formulate new rules for international law of treaties. These latter include the Convention on the Prevention and Punishment of the Crime of Genocide (1948), which states that "genocide whether committed in time of peace or in time of war, is a crime under international law which they (the signatory states.—*I.B.*) undertake to prevent and to punish". The Geneva Conventions for the Protection of War Victims (1949) stipulate international criminal responsibility for a number of war crimes not listed in the Hague Conventions of 1907 but which were condemned by the Charter and the Judgement of the Nürnberg Tribunal. A number of General Assembly resolutions explicitly define the policies of apartheid, eviction of the local population, etc., as international crimes.

In 1968, the General Assembly adopted the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. Among crimes against humanity the Convention lists "...eviction by armed attack or occupation and inhuman acts resulting from the policy of apartheid, and

the crime of genocide...", which were also noted in the Charter of the Nürnberg Tribunal.

Under Articles I and IV of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1968), no statutory limitations shall apply to war crimes or to crimes against humanity (Art. I), and the signatory States shall be duty bound to take legislative and other measures to secure compliance with this provision (Art. IV) (Res. 2391/XXIII/).

All this suggests that court decisions can have a powerful impact on the evolution of international law, by determining both its general principles and present trends of development in a specific branch of law.

A court decision constitutes a source of law in a particular case and is binding upon the parties concerned. Article 59 of the Statute of the International Court of Justice stipulates that "the decision of the Court has no binding force except between the parties and in respect of that particular case". In another similar case, the court may take into consideration its decision regarding the previous case and make use of the arguments and even the decision itself. However, the new decision must be formulated anew.

A curious example in this connection is the decision adopted by the U.S. Military Tribunal in Nürnberg in the Milch Trial (1947), which stated that the essence of war consists in the fact that either one or the other side will suffer defeat, and generals or statesmen were experienced enough to be aware of this in drawing up the laws and following the customs of war on land. In other words, these laws and customs of war on land cover all stages of warfare. In 1948, in its decision on the Krupp Case, the U.S. Military Tribunal in effect repeated its verdict in the Milch Trial, concluding that the defendant could not plead his right to strive for victory in war as a justification for plundering occupied territories.

In examining the decisions of international courts of justice after World War II, it can be concluded that their rulings are in no way mutually binding. The verdict on the Flika Case (1947) states that, taking into account previous rulings on the matter, the tribunal can only "regard them as advisory opinions". This confirms the provision that any wording of any court judgement may be adopted by another court or tribunal, depending on its merits, at its own discretion.

It should be noted that the judgement on the Justice Trial (1947) states that international law does not result from legisla-

tive activity, that its content is not immutable, and that the absence of a world authority empowered to independently formulate standards of international law, does not preclude its progressive development.

The legal wording of one ruling can be used in another ruling. The court ruling on the Krupp Case (1948) referred to the opinion expressed by Judge Philips in the Milch Case (1947) to the effect that the authority to order deportation from an occupied territory was invoked by Judge Philips in his consenting opinion in the Milch Case. The court found Judge Philips' opinion well justified and accepted it accordingly.

Rulings made by national courts are taken into consideration by international courts of justice in cases where they contain elements of international law.

Socialist legal doctrine maintains that court rulings should be regarded as indirect sources of law in the field of international relations.[1] It is generally recognized that under international law, court rulings do not set a binding precedent. At the same time, in accordance with Art. 38 of the Statute of the International Court of Justice, court rulings may be applied by a court as a subsidiary means in defining legal standards.

The Anglo-American doctrine of law, on the other hand, attaches great importance to precedent-setting court rulings, regarding them as an actual source of law.[2] A ruling made by a national court gives rise to certain rights and duties for the given State and for natural and legal persons concerned. In international relations, of course, their role is limited. However, several court rulings by national courts in various countries on similar matters may and actually do influence the development of a given international legal principle or standard, since they give rise to identical or similar obligations of States, natural and legal persons, thus preparing the ground for agreement between States on the matter concerned.

In this sense rulings made by national courts can also be regarded as indirect sources of international law.

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[1] See: *A Course of International Law*, Third Edition, Moscow, 1972, Ch. II, pp. 23-24 (in Russian); I. P. Blishchenko, V. N. Durdennevsky, *Diplomatic and Consular Law*, Moscow, 1962, pp. 19-20 (in Russian); G. Lauterpracht, *International Law by International Court*, Stevens, London, 1958; Nagendra Singh, *Nuclear Weapons & International Law*, Stevens, London, 1959.

[2] See: R. Rubinstein, *John Citizen and the Law*, Zed Books Ltd., London, 1965, pp. 27-28; F. F. Frank, *The General Principles of English Law*, Zed Books Ltd., London, 1957, pp. 20-23.

Of some interest in this connection are court rulings prohibiting or restricting the use of certain types of weapons.

True, there are relatively few court rulings on the classification, use and restriction of use of certain weapons and on questions of permissible and impermissible types of weapons. Yet the decisions of military tribunals set up after World War II have established a certain trend in international legislation.

Prior to 1946, there had been only a few rulings by arbitration tribunals and joint criminal investigation commissions.

In connection with the prohibition or restriction of the use of certain types of weapons, a good example is the Christian Damson v. Germany Case (1925).[1] The case was examined by a joint U.S.-German claims commission. Arbitrator Parker, proceeding from a precise definition of the type of occupation of an individual at a given time, drew a clearcut distinction between the concepts "civilian" and "serviceman", the regime of whose protection is different under the Hague Conventions.

In the Beni-Madan, Rzini Case (1925), which was examined on the basis of an Anglo-Italian agreement of 1923 by a joint Anglo-Spanish arbitration tribunal, Arbitrator Huber analyzed Great Britain's claims regarding the damage caused to its subjects and persons under British protection resulting from Spain's military actions in Morocco against insurgent tribes. He came to the conclusion that the damage caused to the civilian population could be justified only by military necessity.[2]

In 1927, a joint Graeco-German arbitration court examined the Coenca Brothers v. Germany Case. In 1916, when Greece was still neutral, a German Zeppelin bombed Salonika, which was at the time occupied by French troops. As a result, a number of the plaintiff's factories were damaged and some destroyed.[3] This case was in effect the first attempt to formulate the rules of air warfare in international court decisions and specifically to restrict bombing from the air.

At the close of the Trial of the Major War Criminals (of the German Reich) Before the International Military Tribunal, the final judgement of 1 October 1946, expressed the common opinion of the representatives of the four Allied Powers (the

[1] See: *The American Journal of International Law*, 1925, Vol. 19, pp. 815-816.

[2] See: *Recueil des Decisions des Tribunaux Arbitraux Mixtes*, Vol. 7, p. 683; L. C. Green, *International Law Through the Cases*, Stevens, London, 1959, pp. 653-655.

[3] See: L. C. Green, *Op. cit.*, pp. 646-655.

United States, Great Britain, France, and the USSR). Based on international law, this opinion reflected the legal consciousness of the civilized world. The judgement had a great impact on the subsequent development of several branches of international law, becoming itself part of that law.

The Tribunal stated that by order of Hitler's High Command, cities, towns, and villages had been wantonly devastated, which acts were not justified by military necessity.

The German OKW Directive of 16 December 1941 gave the following instructions: "The troops ... have the right and are obliged to apply ... any measures whatsoever also against women and children if this contributes to success...."[1]

The instructions issued by the German Naval Command to captains of U-boats, quoted at the Trial, exorted: "Do not pick up survivors, do not take them on board, and do not take measures to save those in lifeboats of sunk merchant ships. Weather conditions and distance from land are of no importance. You must care only about your own vessel and fight to achieve the next success as soon as possible. We must be cruel in this war..." These instructions are in striking contrast to the 1936 London Protocol on submarine warfare.

The prosecution cited a great many such orders and instructions issued by the Nazi command. In its judgement, the Nürnberg Tribunal stated that these orders deserved the most serious condemnation.

The International Military Tribunal for the Far East charged former Japanese General Iwane Matsui with atrocities committed by Japanese troops in Nanking, China, in 1938. General Matsui was accused of personally giving orders to perform these acts.

The indictment stated, in part, that General Matsui must have known, from his own observations and from the reports of his staff officers, what was going on. He was Commander of the army which was responsible for perpetrating these atrocities. He knew about them. He was vested with sufficient authority to control his troops and protect the innocent residents of Nanking. So he had to bear criminal responsibility for failure to perform this duty.

The International Military Tribunal for the Far East sentenced General Matsui to death.

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[1] *Trial of the Major War Criminals Before the International Military Tribunal. Nürnberg, 14 November 1945-1 October 1946. Nürnberg, Germany, 1947, Official Documents*, Vol. 1, p. 362.

In 1946, the U.S. military tribunal examined the case of General Yamashita, former commander of the Japanese army in the Philippines.[1]

The prosecution stated that during his stay in the Philippines from 9 October 1944, to 2 September 1946, as Commander of the Armed Forces of Japan, which was in a state of war with the United States and its allies, he unlawfully neglected his duties of controlling the actions of persons under his command, permitting them to commit grave crimes against the people of the United States and its allies, specifically against the Philippines, thus violating the laws and customs of war.

The military commission investigating the case found that these grave crimes were committed by the personnel of the Japanese Armed Forces under Gen. Yamashita's command. Far from being incidental, these acts were performed systematically, in many cases under the observation of Japanese officers. In that period, Gen. Yamashita dit not control the actions of his troops, as was his duty under the circumstances. General Yamashita appealed against the Tribunal's Ruling to the U.S. Supreme Court. After examining his complaint, the U.S. Supreme Court stated: "It is not denied that such acts directed against the civilian population of an occupied country and against prisoners of war are recognized in international law as violations of the law of war (Articles 4, 28, 46 and 47, Annex to Fourth Hague Convention, 1907) ... But it is urged that the charge does not allege that petitioner had either committed or directed the commission of such acts, and consequently that no violation is charged as against him. But this overlooks the fact that the gist of the charge is an unlawful breach of duty by petitioner as an army commander to control the operations of the members of his command by 'permitting them to commit' the extensive and widespread atrocities specified."[2]

The U.S. Supreme Court raised the question as to whether the law of war imposes upon an army commander the duty to control and prevent such actions by his troops that are in violation of that law, and whether personal responsibility may be placed on him for failure to take measures against his soldiers

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[1] See: *Law Reports of Trials of War Criminals*, 1949, Vol. IV; "Yamashita U.S. I, (1946)", *The American Journal of International Law*, Washington, 1946, Vol. 40, p. 452.

[2] *The American Journal of International Law*, April 1946, No. 2, p. 438.

who have got out of control and committed breaches of the laws and customs of war.

The U.S. Supreme Court emphasized that in the course of military operations, excesses which were not restricted by the commander's orders or personal actions, almost inevitably led to violations, whose prevention was the object of law. Its aim, which consisted in protecting the civilian population and prisoners of war against brutality, would not be achieved if the commander of an occupation army could with impunity neglect to take reasonable measures for their protection.

The laws and customs of war imply that their violation should be excluded through control over military operations on the part of commanders, who are to a certain extent responsible for the actions of their subordinates. The Supreme Court also pointed out that, as military governor of the Philippines and at the same time Commander of the Japanese Armed Forces there, the General was in duty bound to take all the measures within his power and appropriate under the conditions, to protect the prisoners of war and civilian population. This duty of the Commander was thereby recognized, and its breach was subject to criminal punishment by military tribunals. The Commission heard all the evidence and concluded that Gen. Yamashita had failed to perform the duties imposed on him by the laws and customs of war, which fact was sufficient to pronounce him guilty. General Yamashita was sentenced to death.

At the trial in Khabarovsk, USSR (December 1949), of former Japanese servicemen, twelve of them, including the Commander-in-Chief of the Kwantung Army, were charged with manufacture and use of bacteriological weapons.

One of the points of the indictment accused Unit 100 of the Japanese Army of waging a systematic bacteriological war across the Soviet and Mongolian borders, specifically in the Trekhrechye area (the valley of the three rivers: Amur, Sungari, and Ussuri), USSR.

According to evidence presented at the trial, from 1939 onwards, bacteriological warfare waged on Soviet territory, employing chiefly plague bacteria, claimed at least 500-600 lives a year. In 1939 and 1940, the Japanese aggressors also spread epizootics on Soviet and Mongolian territory. The major war criminals were sentenced to 25 years of imprisonment and their accomplices to 3-15 years. On these grounds, the Soviet government demanded in its note of 1 February 1950 that the organizers and instigators of the manufacture and use of bacteriological weapons be tried by the International Court of Justice.

Thus it can be concluded that court rulings in this field have made and continue to register a serious impact on the emergence and development of international humanitarian law.

Today, we already know a number of international agreements and decisions of international organizations which contain principles and standards formulated as a result of examining specific cases by both national and international judicial authorities, which confirmed and concretized in specific situations certain provisions of international humanitarian law.

Finally, another source of international humanitarian law is the decisions of international organizations, which have been greatly influencing the formation and development of this branch of law, especially in recent years. Among such decisions adopted by international organizations, one should single out binding decisions (e.g., those adopted by the UN Security Council) and decisions of an advisory nature. Decisions on questions of international humanitarian law made by such high-ranking international organizations as the UN General Assembly, passed unanimously or with no opposing votes, cannot be regarded as ordinary advisory decisions and, in our view, must be considered mandatory.

Such decisions influence the making of international agreements, and therefore, the development of international legal consciousness. Consequently, if they are binding, they should be regarded as direct sources of international humanitarian law, while if they are advisory, they are indirect, auxiliary sources.

In the field of international humanitarian law, doctrines advanced by prominent jurists may also be considered as indirect sources. The names of scholars whose works have greatly influenced the emergence and development of international humanitarian law are known worldwide. These include I. Pirogov (Russia), A. Dunant (Switzerland), F. Martens (Russia), Ye. Korovin (USSR), R. Baxter (USA), G. Merowitz (USA), R. Falk (USA), J. Fried (USA), R. Drieper (Great Britain), Ph. Bretton (France), Ch. Rousseau (France), F. Kalshoven (Holland), H. Blix (Sweden), A. Rosas (Finland), E. Castren (Finland), G. Pictet (Switzerland), G. Moreillon (Switzerland), M. Bothe (Switzerland), A. Cassese (Italy), J. Salmon (Belgium), F. Rigaux (Belgium), G. Abi-Saab (Egypt), H. Sultan (Egypt), H. Gros Espiell (Uruguay), A. García Robles (Mexico), J. Castañeda (Mexico), N. Singh (India), K. Partsch (FRG), M. Bother (FRG), K. Ipsen (FRG), G. Herczegh (Hungary), R. Bierzanek (Poland), S. Nahlik (Poland),

S. Dabrova (Poland), B. Graefrath (GDR), B. Yacovlevič (Yugoslavia), I. Patronožič (Yugoslavia), K. Obradovič (Yugoslavia), I. Artsibasov (USSR), O. Khlestov (USSR), A. Poltorak (USSR), and D. Savinsky (USSR).

In their writings they have expressed ideas which have profoundly influenced both the shaping of legal consciousness and the elaboration of international agreements which today constitute the system of principles and standards of international humanitarian law.

§ 2. The Principles of International Humanitarian Law

The principles and standards of international humanitarian law not only regulate the conduct of those taking part in international relations, but at the same time serve as a legal criterion of such conduct. Like all branches of international law, international humanitarian law contains a number of basic principles underlying the entire system of this branch. These basic principles include above all the principle of *promotion of and respect for fundamental human rights and freedoms,* which is basic for international humanitarian law and is subject to observance in all situations (*see* the Universal Declaration of Human Rights). Secondly, it includes the principle of *equality and non-discrimination in all forms and manifestations.* Here we again refer to the Universal Declaration of Human Rights, to the International Covenants on Human Rights, and many other international legal instruments. Para. 2 of Article 2 of the International Covenant on Economic, Social and Cultural Rights states: "The State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Similar demands are stated in Para. 1 of Article 2 of the International Covenant on Civil and Political Rights. Thirdly, an examination of international treaties and agreements suggests the principle of *promotion of friendly relations among nations.*

Another principle of international humanitarian law is the *promotion of social and economic progress and improvement of standards of life in larger freedom,* including development of education and culture. It should be borne in mind

that the concept of freedom is determined by the concrete social and economic conditions in which a person lives and by the legislative provisions and standards of international treaties and agreements which oblige the State to grant its citizens certain rights.

Among the principles of international humanitarian law is the *unity of rights and respective duties*, since under international humanitarian law there exists an interdependence between human rights and performance of specific duties recorded in national legislation and in international agreements. At the same time, one should bear in mind the rights and duties of the State in the light of the mandatory requirement of observing fundamental human rights and freedoms in line with the generally recognized principles and concrete rules of contemporary international law. This implies recognition of the responsibility of governments and individuals for observance of human rights and freedoms.

Finally, there is the principle of the *right of peoples and nations to self-determination*. It is the cornerstone of the system of international humanitarian law, and its observance will ensure favourable conditions for the exercise of fundamental human rights and freedoms. For that reason, the Universal Declaration of Human Rights, the International Covenants on Human Rights, and a number of General Assembly resolutions, recognize the right of peoples and nations to self-determination as an essential condition for the exercise of human rights (*see* General Assembly resolutions 637/VII, 1952/, 1514/XV, 1960/, and Art. I of the International Covenants on Human Rights).

The oldest and most basic principle of international humanitarian law is the one traditionally referred to as the principle of *humaneness*. The fundamental role of this principle and its importance in this branch of law is recognized by almost all leading jurists of international law.[1]

International humanitarian law cannot reflect, let alone foresee, all the circumstances which might arise in the course

[1] L. Oppenheim. *International Law: A Treatise*, Vol. II, Longmans, Green and Co., 1935, p. 188; A. P. Higgins and C. J. Colombos, *On the International Law of the Sea*, Longmans, Green and Co., London, 1953; N. Singh, *Nuclear Weapons and International Law*, Stevens, London, 1959; A. I. Poltorak, L. I. Savinsky, *Armed Conflict and International Law*, Moscow, 1976, p. 123 (in Russian); M. Boginska, *International Legal Problems of Prohibition or Restriction of the Use of Certain Types of Conventional Weapons: Thesis for Candidate's Degree*, Moscow, 1978 (in Russian).

of military action. Therefore all cases not covered by specific standards of international law are nevertheless subject to regulation by the principles of international law ensuing from customary law, humaneness, and dictates of public consciousness. Thus, the practical importance of the principle of humaneness lies in its ability to fill the gaps in the system of international humanitarian law. The principle of humaneness applies to all situations both in peacetime and in armed conflicts and, significantly, is not limited to prohibiting the use of force beyond the limits of military necessity.

The legal basis of this principle is a number of acts of international law, above all the St. Petersburg Declaration of 1868, the Fourth Hague Convention of 1907, the Geneva Conventions of 1949, the Protocols of 1977 Additional to the Geneva Conventions, and the International Covenants on Human Rights of 1966.

The St. Petersburg Declaration speaks of the need to fix "the technical limits at which the necessities of war ought to yield to the requirements of humanity", emphasizing that "the progress of civilization should have the effect of alleviating as much as possible the calamities of war". Also of great importance in the development of the principle of humanity was the Fourth Hague Convention. The Preamble to this Convention states the aim of legal regulation of war as "to serve ... the interests of humanity and the ever progressive needs of civilization". Further, the Convention states that all these decisions were inspired by the desire to alleviate the calamities of war, and that the laws and customs of war must include "such limits as would mitigate their severity as far as possible". The Second Hague Convention of 1899 and the Fourth Hague Convention of 1907 include in the Preamble an important provision known as the Martens Clause in order to emphasize the applicability of international law even in cases where current international agreements do not provide for a ban on certain types of weapons.[1] This implies that in such cases the civilian population and the combatants remain under the protection of international law inasmuch as its principles arise from customs which have developed between civilized nations, the principles of humanity and the dictates of public consciousness.

The Geneva Conventions of 1949 contain a number of

[1] See: S. McBride, "The Legality of Weapons for Societal Destruction", *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*, Geneva, 1984.

provisions concretizing the principle of humanity: for example, Art. 13 of the Convention Relative to the Protection of Civilian Persons in Time of War states that its provisions "are intended to alleviate the sufferings caused by war". Article 13 of the Convention Relative to the Treatment of Prisoners of War stipulates that "prisoners of war must at all times be humanely treated", that they "must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity", and that "measures of reprisal against prisoners of war are prohibited".

The provisions of these conventions and of a number of other sources of international law are based on a common understanding of the principle of humaneness, which, in particular, prohibits unrestricted use of force in the course of military action; expresses the desire to protect man's vital interests and dignity and to protect the natural environment necessary for human survival; and obliges the belligerents to use, from the legal point of view, the most restricted, and most humane methods and means of warfare.

This principle implies the exclusion from warfare of such weapons and methods which create the threat of mass extermination of persons not taking part in the hostilities, inflict unnecessary suffering and make human death inevitable in all circumstances. Such actions violate the principles of equality and human dignity, extend the armed conflict to parties not directly involved in it, and place considerations of military necessity above the requirements of human morality.

The principle of humaneness is the most general principle of international humanitarian law, uniting all its provisions into a logical system and at the same time connecting the system of rules applicable in peacetime and those applicable in military conflicts with other branches of international law.

Another principle of international humanitarian law applicable during military conflicts is the so-called principle of *restricting the belligerents in their choice of the ways and means of warfare.*[1]

In its most general form, this principle was formulated in Art. XXII of the Hague Convention Respecting the Laws and Customs of War on Land (1907): "The right of belligerents to adopt means of injuring the enemy is not unlimited". Yet

[1] This principle is sometimes referred to as "the principle of restriction" or "the principle of inadmissibility of using barbaric and inhuman means of warfare".

even before this Convention, international law contained bans on certain means of warfare which were considered to be the most barbaric and inhumane.

For example, the St. Petersburg Declaration (1868) determines that the sole aim belligerent States should have in time of war should be to weaken the armed forces of the enemy. It stresses, as we noted, the need to fix "the technical limits at which the necessities of war ought to yield to the requirements of humanity". Such rules are to be found in a number of other international legal instruments, e.g., in the Geneva Conventions (1949) and the Protocols Additional to the Geneva Conventions (1977).

At present, there are a number of international legal standards which concretize the principle of restricting the choice of means of warfare and define its content in detail. There are two types of prohibition of the use of weapons—*special* and *general*. Special rules prohibit the use of certain specific types of weapons. Some scholars quite correctly call them unconditionally prohibited means of warfare[1] and believe that they remain prohibited even when they are necessary for achieving the aims of war, emphasizing that their use is inadmissible even when required by military necessity.[2] These two rules are very important from both the legal and practical standpoints, since they apply not only to certain specific types of weapons and methods of war, but to all types of weapons and methods. Furthermore, these special rules, as well as general provisions and principles, today underlie the criteria of admissibility of using certain particular types of weapons and methods of warfare.

For example, in line with these criteria, international law bans weapons which inflict unnecessary suffering, make inevitable the death of servicemen put out of action, are treacherous in character, or have indiscriminate effects. Consequently, these criteria must be taken into account in determining the admissibility of a weapon which, though not banned by special rules of international humanitarian law, must still be deemed prohibited by virtue of meeting one of the above criteria. The Protocol Additional to the Geneva Convention of 1949 and Relating to the Protection of Victims of International Armed Conflicts (Art. 36, "New Weapons"), introduced a new

[1] Erik Castrén, *The Present Law of War and Neutrality*, Helsinki, 1954, p. 154.

[2] J. Kunz, *Das Krieg und Völkerrecht*, J. Springer, Vienna, 1927, p. 30.

mandatory rule of international law under which "in the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party".

Scholars in international law usually single out the principle of honesty and good faith in choosing the means and methods of warfare, often referred to in Western literature as "the principle of chivalry".[1] Under this principle, the belligerents must show honesty and good will in the choice of methods of warfare and refrain from using treacherous or perfidious methods. The Fourth Hague Convention stipulates that it is forbidden to kill or wound treacherously individuals belonging to the hostile nation or army (Para. *b*, Art. 23); to kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion (Para. *c*, Art. 23); to pillage a town or place, even when taken by assault (Art. 28); to make improper use of the flag of truce, of the national flag or of the military insignia and uniform of the enemy (Para. *f*, Art. 23). It also states that family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected (Art. 46). Article 3 of th Geneva Conventions of 1949 prohibits any kind of violence to life and person of civilians taking no active part in the hostilities, in particular, murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages against personal dignity, in particular, humiliating and degrading treatment; the passing of sentences and the carrying out of executions without judgement. At the same time, Art. 24 of the Hague Conventions states that "ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible" and, therefore, do not run counter to the principle of honesty and good faith. However, this principle is often used by Western bourgeois strategists and military officials to justify treacherous methods of warfare. An example is U.S. aggression in Indo-China. A U.S. manual on the rules of land warfare states, for instance, that it is sometimes hard to draw a clearcut distinction between lawful military ruses and prohibited acts of treach-

[1] N. Singh, *Nuclear Weapons and International Law, Op. cit.*, London, 1959.

ery.[1] We cannot agree with such a principle. International humanitarian law applicable to armed conflicts, contains definite standards which make it possible to determine with a fair degree of precision which particular methods of warfare should be considered treacherous.

The major principles of international humanitarian law applicable to armed conflicts include: (a) the principle of *protecting the civilian population*; (b) the principle of *protecting the victims of war*; and (c) the principle of *protecting civilian facilities*. Logically, proceeding from the principle of humaneness, these principles place under international legal protection certain categories of persons and facilities. They are closely interrelated and supplement each other. For that reason, international legal doctrine often examines them as one general principle.

These principles are almost universally recognized by jurists worldwide, although there is a certain lack of agreement on the terminology and their sphere of application. A number of authors, for example, while grouping into one principle the protection of certain categories of persons and facilities, consider only civilians under protected persons.[2] Other authors do not include the protection of civilian structures. For example, L. Oppenheim speaks of "the basic rule" which prohibits direct assault on noncombatants.[3] But this is a very narrow interpretation of existing rules in this field. Contemporary international law, especially after the Geneva Conventions of 1949, protects not only the civilian population, but all "victims of war", that is, persons who either have not taken part in the hostilities from the very beginning or, from a certain moment in the hostilities, have ceased to take part for one reason or another (prisoners of war, wounded, sick, and shipwrecked servicemen). Proceeding from this, Soviet scholars A. I. Poltorak and L. I. Savinsky quite correctly speak of the general principle of "protection of victims of war and civilian structures",[4] arguing that "international law is equally concerned with the protection of all the above-mentioned categories of persons (though regulating their status by a number of rules) and consequently there is every reason to speak of the princi-

[1] See: *Rules of Land Warfare. U.S. War Department, Basic Field Manual*, Oct. 1940.

[2] Alfred Verdross, *Völkerrecht*, Springer Verlag, Vienna, 1955.

[3] L. Oppenheim, *International Law: A Treatise*, Vol. II, Sect. 1, London, Longmans, 1960.

[4] A. I. Poltorak, L. I. Savinsky, *Op. cit.*, p. 128 (in Russian).

ple of protection of all 'victims of war' rather than only protection of civilians."[1]

In accordance with the Protocol Additional to the Geneva Conventions of 1949 and Relating to the Protection of Victims of International Armed Conflict (Protocol I), international law provides special protection during armed conflicts to the civilian population and civilian facilities (objects). Article 48 formulates the general rule on this count, according to which "in order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives". The Protocol contains a clearcut definition to the effect that the civilian population comprises all persons who are civilians. A civilian is defined as any person who does not belong to the personnel of the armed forces, the personnel of an emergency volunteer corps or a volunteer detachment forming part of these armed forces; to the personnel of any other emergency volunteer corps or volunteer detachment, including the personnel of organized resistance movements; to the population of an unoccupied zone which, with the approach of the enemy, takes up arms to fight the invaders before having time to organize into a regular armed force; and also to movements fighting for the right to self-determination and against colonialism (Art. 50).

An additional guarantee of complete protection of the civilian population is the principle of protection of civilian objects, and also the protection of the natural environment. Additional Protocol I provides for several rules confirming this principle and extending its sphere of application. Article 52 of the Protocol contains a general provision, according to which civilian objects shall not be the objects of attack or of reprisals (Para. 1).

International humanitarian law applicable in armed conflicts regulates in great detail the protection of civilians, victims of war, and civilian objects. However, in cases where such protection is regulated more broadly in other general international legal acts, these latter take precedence in interpreting the principle of protection of victims of war and civilian objects.[2]

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[1] A. I. Poltorak, L. I. Savinsky, *Op. cit.*, p. 129.
[2] See: UN Doc. A/8052 (XXV), pp. 10-11.

Among the principles of contemporary international humanitarian law applicable to armed conflicts, somewhat unusual is the so-called principle of *military necessity*. Western bourgeois doctrine even considers it to be the basic principle of this system of law[1] and uses it as a legal justification of unlawful military actions performed by imperialist armed forces in defiance of the fundamental principles of international humanitarian law.

This principle, the object of many decades of controversy, was derived from a number of formulas in several international legal acts. For example, the St. Petersburg Declaration of 1868 speaks of alleviating "as much as possible" the calamities of war and of the need to fix the technical limits at which "the necessities of war" ought to yield to the requirements of humanity. The Hague Conventions of 1907 speak of confining the laws and customs of war with such limits as would mitigate their severity "as far as possible" and states that the Convention's provisions are animated by the desire to alleviate the calamities of war "as far as the necessities of war permit".

If one accepts a broad interpretation of this term,[2] it will turn into a rule, or even a basic principle, obviously at odds with other principles of this branch of law. In referring to military necessity, the belligerents would interpret it in such a way as to render pointless the entire system of international humanitarian law applicable to armed conflicts.

The principle of military necessity has come under heavy criticism not only from socialist scholars[3] of international law, but from a number of Western bourgeois jurists as well.[4] Such criticism is also supported by court practice, as evidenced, for instance, by the judgements of the Nürnberg and Tokyo trials of war criminals. One of the judgements states, in part, that military necessity or expediency cannot justify violation of the positive norms of international law. At this point, one faces a crucial question: how indeed is the principle of mili-

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[1] M. Greenspan, *The Modern Law of Land Warfare*, University of California Press, Los Angeles, 1953.

[2] See, for example, *The British Manual of Military Law*, London, Ministry of Defence, 1929, p. 220; V. Friedman, *American Journal of International Law*, 1939, Vol. 1, No. 35, p. 177; Ph. Jessup, *A Modern Law of Nations*, Macmillan, New York, 1949.

[3] A. I. Poltorak, *The Nürnberg Trial: Basic Legal Problems*, Moscow, 1966, pp. 169-180; A. I. Poltorak, L. I. Savinsky, *Op. cit.*, pp. 92 *et seq* (both in Russian).

[4] E. Castrén, *Op. cit.*, p. 65; G. Schwarzenberger, *The Law of Armed Conflict*, London, 1968, p. 136.

tary necessity to be interpreted in the context of contemporary international humanitarian law? First of all, military necessity should be seen as a principle reflecting the conditions of warfare, since "the only lawful objective that States must pursue when at war is to weaken the military power of the enemy by putting as many people out of action as possible" (St. Petersburg Declaration of 29 November-11 December 1868). However, international law rejects the interpretation of military necessity as absolute military advantage and, therefore, restricts the belligerents' freedom to choose the methods and means of warfare. For their part, the belligerents assume concrete international obligations or, as subjects of international law, simply agree to these restrictions, thereby renouncing any attempt to gain military advantage at any price in violation of the rules of international law.

It should be added that even if a nation is waging a just war (for example, it is a victim of aggression) and even if armed struggle is dictated by dire necessity, with the nation's very existence at stake, it must not employ, under the pretext of military necessity, methods and means of warfare prohibited by international law.[1] Military necessity must be seen as the desire to reach a military goal by methods and means permitted under international law. Therefore, references to military necessity are possible only when the situation conforms to the standards defined by international humanitarian law applicable to armed conflicts. The fact that military necessity should be regarded as an exceptional case, is demonstrated by the very wording of the provisions on the permissibility of references to military necessity. The Fourth Hague Convention speaks of "imperative necessity" (Art. 23, *g*) and of "extreme necessity" (Art. 4). The Geneva Convention on the Protection of the Civilian Population speaks of "absolute necessity" (Art. 53). The Geneva Convention Relative to the Treatment of Prisoners of War states that reference to military necessity shall be permitted only as an exception and for a limited period of time (Art. 126).

Protocol I contains a clearcut definition of cases when a plea of military necessity is permissible. For example, Article 54 ("Protection of Objects Indispensable to the Survival of the Civilian Population") states that "in recognition of the vital

[1] *A Course of International Law*, in six volumes, Moscow, 1969, Vol. V, p. 275 (in Russian); V. Petrov, *Crimes Against Peace and Humanity*, Sofia, 1971, p. 44.

requirements of any Party to the conflict in the defence of its national territory against invasion, derogation from the prohibition contained in paragraph 2 may be made by a Party to the conflict within such territory under its own control where required by imperative military necessity". According to Art. 56, special protection of works and installations containing dangerous forces "shall cease ... if it is used ... in regular, significant and direct support of military operations", and only then attack shall be permitted if "such attack is the only feasible way to terminate such support".

Protocol I restricts military necessity by the principle of proportionality, which permits the employment of unprohibited types of weapons and methods of warfare. This principle is of paramount importance.

In concluding our analysis of the principle of military necessity within the framework of international humanitarian law, it should be stressed that, considering the very nature of armed conflict, all the above-mentioned principles are to a certain extent restricted by military necessity which, in turn, may be pleaded only within the bounds and on the basis of international treaties and agreements. For their part, current international treaties and agreements proceed from the premise that the necessities of war ought to yield to the requirements of humanity and social consciousness.

Chapter II

International Agreements on Human Rights, Freedoms and Social Progress

§ 1. The Soviet Union's Contribution to the Emergence and Development of International Protection of Human Rights and Freedoms

Today, with the shift in the correlation of international forces in favour of peace and social progress, the extent to which man can enjoy human rights and freedoms has become one of the basic issues in the competition between capitalism and socialism, between the forces of reaction and progress.

The twentieth century is the age of socialism. The example of the first socialist State, whose very emergence curbed the aggressive ambitions of the capitalists and forced them to act with more caution, has profoundly influenced the entire course of world history.

The construction of a new society in the USSR and other socialist countries has revealed to the world a new type of man. Depending on how much fuller and richer his life has become and how much say he has in running society, we can speak of achievements in the building of this new society.

When Karl Marx wrote of the coming victory of socialism, he meant not only the liberation of man from exploitation, establishment of a new mode of production and new production relations, but also the emergence of a new type of man, a free man selflessly devoted to communist ideals, a staunch fighter, a revolutionary, and a conscientious worker. The Communist Manifesto proclaimed: "In place of the old bourgeois society, with its classes and class antagonisms, we shall have an association in which the free development of each is the condition for the free development of all."[1]

In 1877, Karl Marx wrote that the Communist society as-

[1] Karl Marx and Frederick Engels, "Manifesto of the Communist Party", in: Karl Marx, Frederick Engels, *Collected Works*, Vol. 6, Progress Publishers, Moscow, 1984, p. 506.

sured the fullest development of man alongside the fullest development of the social forces of production.[1]

This theoretical thesis has today become reality in the socialist countries. In the course of building socialism, the scientific prophecy of the founders of Marxism is confirmed by facts and by the very logic of social development.

"...By what criteria are we to judge the *real* 'thoughts and feelings' of *real* individuals?" Lenin asked. "Naturally, there can be only one such criterion—the *actions* of these individuals. And since we are dealing only with social 'thoughts and feelings', one should add: the *social actions* of individuals, i.e., *social facts*."[2] The history of the socialist countries, above all the USSR, has demonstrated beyond any doubt that the "social facts" speak in favour of socialism.

The opponents of socialism claim that Communists never did manage to educate a new type of man. Such allegations are quite understandable: otherwise these opponents would have had to acknowledge that the social, economic and political changes in the socialist countries are in the interests of the working people, that is, to acknowledge that the future belongs to communism.

An old ploy of Western bourgeois propaganda has been to allege that Marxist Communists recognize only the role of the collective and society as a whole, that they dismiss the role of the individual and concentrate only on man's material needs, ignoring his intellectual, cultural and spiritual interests.

Lenin always underscored the need for harmonious development of the individual under socialism. He wrote that "*only* socialism will be the beginning of a rapid, genuine, truly mass forward movement, embracing first the *majority* and then the whole of the population, in all spheres of public and private life".[3]

Marxism-Leninism proceeds from the assumption that the intellectual and cultural wealth of every individual, as well as his character and behaviour, are determined by the conditions in which he lives. Although, within this basic pattern,

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[1] See: *Perepiska K. Marxa i F. Engelsa s russkimi politicheskimi deyatelyami* (Correspondence by K. Marx and F. Engels with Russian Political Figures), Gospolitizdat, Moscow, 1951, p. 222 (in Russian).

[2] V. I. Lenin, "The Economic Content of Narodism and the Criticism of It in Mr. Struve's Book", *Collected Works*, Vol. I, Progress Publishers, Moscow, 1986, p. 405.

[3] V. I. Lenin, "The State and Revolution", *Collected Works*, Vol. 25, Progress Publishers, Moscow, 1977, p. 477.

there can be many deviations, especially in the development of each particular individual, where moods, predilections, and talents play an important part in the life of any particular person.

Nevertheless, it is man's social surroundings that play a decisive role in shaping his interests and requirements. His goals, ideals, motives, and standards of behaviour in the long run mould his character, determining his type of personality. "If man is shaped by environment", Marx and Engels wrote, "his environment must be made human."[1]

The creation of a "human environment" in the course of building a socialist society is conditioned by the development of socialist consciousness of the general public, the major elements of which are social ownership of the means of production, work at socialist enterprises, distribution according to work done, active involvement in political life, maintenance of law and order, and the educational work of the Party and State. Evidence of this are the decisions of the 27th Party Congress and their implementation.

The most important of the factors listed above is social ownership of the means of production, which rules out exploitation of man by man and makes the satisfaction of the material and cultural needs of all members of society the ultimate aim of production. This determines new criteria of the individual's position in society, where his own labour becomes his only source of income, determining his social status, active participation in public affairs, and dignity.

Marx and Engels noted that man "will develop his true nature only in society, and the power of his nature must be measured not by the power of the separate individual but by the power of society".[2]

In socialist society, a major role is played by the work collective, since it is in the work collective that the greater part of man's material, cultural and moral requirements are shaped and satisfied. Therefore, the success of communist education depends on the improvement and refinement of every aspect of the collective's life. Of great importance in this respect is that all the collective's members should be aware of their common goals, whose accomplishment will directly affect the development of each individual and satisfaction of his personal needs.

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[1] Karl Marx and Frederick Engles, "The Holy Family", in: Karl Marx, Frederick Engels, *Collected Works*, Vol. 4, 1975, p. 131.

[2] *Ibidem.*

At a nationwide level, the Communist Party of the Soviet Union and the Soviet Government are at present implementing a comprehensive programme of social, economic, political and educational measures.

In the first place, this includes continued improvement of working conditions with the ultimate aim of eliminating arduous manual labour, completely mechanizing and automating production, and creating an abundance of goods.

Secondly, this includes continuous perfection of ideological education, aimed at helping every member of society to reach a high level of political awareness and social involvement; instilling a communist attitude to work and to public property; and educating the people, especially the youth, in a spirit of Soviet patriotism, proletarian internationalism, an uncompromising attitude to bourgeois ideology, and a readiness to defend the achievements of socialism.

Thirdly, this includes continued improvement of socialist legislation, supervision over precise and effective application of laws, and vigorous action against all violations of the norms of socialist society.

These measures are being taken within the framework of socialist democracy, which ensures a wide range of social and political rights and fundamental freedoms and provides ample opportunity for the people's involvement in managing state, economic and social affairs.

However, in no society can the individual's freedom be absolute. In socialist society, restrictions of personal freedom are based on the high moral principle of not permitting one individual's freedom of action to encroach on the rights and interests of another. Such restrictions are, therefore, imposed in the interests of the vast majority of citizens. Today, progressive-minded people everywhere are against any kind of restrictions in the struggle against capitalism, but at the same time they are for the restriction of the freedom to act for the restoration of capitalism, racism and fascism. They are against the freedom to unleash wars, because such freedom would be tantamount to the elimination of the human rights and freedoms of the majority.

It should be borne in mind that under socialism personal freedom is not something rigid, fixed once and for all. As our society advances towards communism and the socialist State gradually withers away, replaced by public self-government, all restrictions of personal freedom will be reduced to a minimum.

Personal freedom depends on a number of factors, above all, the material potential of society. This is determined by production efficiency, the level of the people's political awareness, organization and discipline. Another factor to be considered is the correlation of class forces internationally and the world political situation as a whole.

As socialist society continues to extend personal freedoms, it becomes increasingly important to raise to a qualitatively new level the material and cultural foundations of personal freedom, and also to find the most rational balance of individual and public interests.

Personal freedom is both the goal and the condition of social progress. The Communist Party sees its task in promoting social progress in every possible way. Consequently, the day-to-day work of the Party directly encourages the development of personal freedom, which in socialist society means the rights and freedoms of the working people—industrial workers, collective farmers, professionals—and implies freedom in work and civic activity in the interests of the nation as a whole.

One of the first legislative acts that defined the nature of socialist democracy in the USSR was the Declaration of Rights of the Working and Exploited People, written by Lenin and adopted at the Third All-Russia Congress of Soviets in January 1918. Today it can be stated that the programme mapped out in this Declaration has been translated into reality.

The socialist doctrine of human rights attaches paramount importance to the system of constitutional, juridical and other guarantees of human rights, which allow man to enjoy his rights to the full, to be actively involved in the affairs of society, and maintain an active position in life. These guarantees are not merely recorded in the Soviet Constitution and other legislative acts. They are guaranteed by an extensive system of social organizations (the trade unions, the Young Communist League, voluntary public inspection, etc.) and the entire system of education and character training.

While proclaiming and guaranteeing human rights in socialist society, socialist democracy rejects the idea of unlimited freedom, which would in practice only lead to anarchy.

Apart from enjoying rights, an individual must also have certain obligations to society, and the law performs the function of an officially recognized limit of personal freedom in society.

Thus, socialist legislation considers it a crime to advocate

war, violence, racism and fascism, and to spread pornography, obscurantism, libel and misinformation.

Actions and political agitation directed at subversion or undermining of the socialist system are also considered to be violations of the law. If such acts are performed deliberately, and especially with aid from foreign States, organizations or persons, socialist society must take steps to protect itself. It should be noted that in socialist society these safeguards have been established by law in order to protect the interests of all working people.

The USSR Constitution is aimed at protecting the socialist system, and this is in the interests of the whole nation, as demonstrated by the nationwide support that the new Constitution received. Nearly 140 million Soviet citizens took part in discussing its draft, making a total of 400,000 suggestions, on the basis of which 110 articles were amended and a new article added.

The Western media often allege with feigned concern that under socialism ordinary citizens cannot freely criticize the flaws of the system, or officials, or trends in socialist art or science. Such claims are absolutely groundless. It is a fact that socialist democracy encourages citizens to freely express their opinions, whether critical or otherwise. And the Soviet media openly discuss the most difficult and painful aspects of building socialism in our country.

Freedom of criticism at all levels and open discussion of all social issues is today an integral part of Soviet life, protected by Soviet law and above all the USSR Constitution. And, of course, efforts by some Western journalists to present as "dissidents" those workers, farmers, and intellectuals who make critical statements in the press, at their places of work, and in government bodies, are not very honest, since what is revealed in such cases is not "dissent" of the type portrayed by anti-Soviet propaganda but active involvement of Soviet citizens in their country's political, economic and cultural affairs. Just as dishonest are efforts to class as "dissidents" those who for some reason or other are dissatisfied with life and blame society for their own mistakes and failures. Unhappy people can be found in any society, and very often their dissatisfaction is a result of psychological causes, not political or socio-economic. In the USSR, too, there are over-ambitious people with exaggerated notions of their own virtues and abilities. There are also those who bear a grudge against the Soviet government for some real or imagined

injustice. Yet the Soviet State does not see such people as its enemies. In fact, it helps those who have been unjustly treated, to restore justice, provides medical treatment for the mentally disturbed, rescues those who have got themselves into trouble, and helps the weak to find their place in life. As a matter of fact, as soon as such "human rights champions" emigrate from the USSR, the Western media usually lose all interest in them.

Socialist democracy provides every opportunity for all Soviet citizens to exercise their inalienable rights and freedoms, including protection of human rights and equality of nationalities and races. The greatest importance is attached to social, material and legal guarantees of personal rights and freedoms.

The basis for solving the problem of human rights in the young Soviet Republic was the abolition of private ownership of the means of production, building of a vigorous socialist economy based on public ownership (state and cooperative ownership), introduction of state planning in the economy, and accelerated development of industry and agriculture. This extensive programme has made it possible not merely to proclaim but to actually ensure conditions for the exercise of the rights to work, rest and leisure, education, and to maintenance in old age and in sickness.

Over two million Soviet men and women are involved in the work of representative government bodies—the Soviets of People's Deputies—at all levels, with another 25 million volunteers taking an active part in deciding the affairs of State.

On 20 September 1972, the USSR Supreme Soviet adopted the Law on the Status of People's Deputies in the USSR. This law has established a broad legal basis for the activity of Deputies as representatives of the people, granting them extensive rights in all spheres. Special importance is attached to a Deputy's rights and duties in upholding Soviet citizens' rights and legally protected interests and combatting violations of the law.

A Deputy must periodically report on his work to his constituency. A Deputy who has not justified the confidence of his constituents (for instance, by not doing enough to defend his constituents' rights and legally protected interests), or who has performed actions unworthy of the noble calling of a Deputy, may be recalled at any time by decision of a majority of voters of his constituency. This provision raises the Deputy's responsibility and makes it possible for his constituents to control his activity.

Recent years have seen the emergence in the Soviet Union of a great number of public initiative bodies: volunteer public order squads, volunteer public inspection teams, comrades' courts, house and street management committees, and all kinds of public councils in specfic fields (education, public health, industry, agriculture).

It has become a tradition in the Soviet Union to submit new draft laws to nationwide discussion. In drawing up new bills, the government enlists the services of various research institutions, consultants and people working in the field.

All this testifies to the active involvement of the Soviet public in legislation and government.

It is a result of the fullest possible exercise of fundamental human rights and freedoms by Soviet citizens.

The political rights of Soviet citizens are guaranteed above all by their right to elect and be elected to all the representative bodies of the state.

The USSR Constitution provides for the right of Soviet citizens to associate in public organizations: trade unions, cooperatives, youth organizations, cultural, technical, scientific, sports associations, and societies for assistance to national defence.

The most politically conscious and active industrial workers, collective farmers, and professionals voluntarily join the Communist Party of the Soviet Union. The Party is the highest form of socio-political organization and the leading and guiding force of Soviet society.

Trade unions are mass organizations with the biggest membership. Under the guidance of the Communist Party, Soviet trade unions have become a kind of school in which working people learn the skills of management and administration. Trade unions organize efficiency campaigns and production drives to meet state economic plan targets. They take part in running state affairs and drawing up laws on labour, production, culture, domestic services and living conditions. Their main aim is to promote the rise of the Soviet people's living standards and cultural level. And the rights and functions of Soviet trade unions are steadily expanding.

In recent years, the All-Union Leninist Young Communist League (YCL) has been increasingly involved in dealing with the issues of young people's study, work, recreation, and day-to-day life. The YCL's political activity has also been intensified, with over half a million young people elected to government bodies (the Soviets of People's Deputies) and some

20 per cent of Deputies to the USSR Supreme Soviet (parliament) consisting of youth.

All public organizations in the Soviet Union play an important role in state government, in managing industry and agriculture, and improving people's rest and leisure.

The Soviet socialist state does not merely proclaim political rights and freedoms, but actually provides all necessary conditions for citizens to exercise freedom of speech, freedom of the press, assembly, meetings, street processions and demonstrations, with printing facilities, means of communication, television, radio and other mass media, as well as public buildings placed at the disposal of the people and their organizations. One-fifth of the world's books and pamphlets are published in the USSR; every other Soviet citizen subscribes to periodicals. No one has the right to curtail freedom of street processions and demonstrations if they do not threaten public order or anyone's life.

The Soviet Constitution guarantees equal rights for all people in all areas of state, economic, social, and cultural activity. This is expressed, above all, in the fact that women enjoy the same rights as men to education, work, remuneration, rest and leisure, and social security. The state protects the interests of mother and child, helps unmarried mothers and mothers of large families, grants paid maternity leave to pregnant women and nursing mothers, and steadily increases the network of child-care institutions.

As a signatory of the Convention on the Political Rights of Women (1953), the Soviet Union consistently implements all its principles, providing favourable conditions for women to actively participate in social affairs on a par with men.

In the USSR, marriage and the family are under the care and protection of the State. Special financial and moral support is given to single mothers and mothers of large families. Soviet legislation protects the rights of children born out of wedlock. In line with the UN Declaration of the Rights of the Child (1959), the Soviet State provides favourable conditions for a happy childhood.

The USSR Constitution guarantees all citizens freedom of conscience: they have the right to profess any religion or to hold atheistic convictions. One of the guarantees of the freedom of conscience is the separation of the Church from the State and school from the Church. Soviet citizens enjoy complete freedom to perform religious rites (however, under the law, religious rites must not disrupt public order). The law

also prohibits coercion of citizens to perform religious rites.

The USSR Constitution proclaims inviolability of the person and prohibits arbitrary arrest. The law places special emphasis on the immunity of People's Deputies. The USSR Constitution and the Constitutions of the Union and Autonomous Republics make the local Soviets of People's Deputies directly responsible for the protection of citizens' rights (Art. 97 of the USSR Constitution, Art. 79 of the RSFSR Constitution, etc.). No one may be arrested except by a court decision or on the warrant of a procurator. The Constitution also stipulates the inviolability of the home and protection of the privacy of citizens' correspondence, telephone conversations and telegraphic communications.

The Soviet State guards the honour and dignity of its citizens. The USSR Constitution (Art. 57) and the Fundamentals of Civil Legislation of the USSR and the Union Republics (Art. 7) provide for the Soviet citizens' right to sue for retraction of statements defamatory to their honor and dignity, where the person making such statements fails to substantiate them. Where such statements are circulated through the press they must, if found untrue, be retracted in the press as well.

The personal property of Soviet citizens is inviolable and protected by the law. Every citizen is entitled to free possession, use and disposal of personal property. However, the law prohibits the use of personal property to the detriment of public interests or for deriving unearned income.

Under the USSR Constitution, the Courts and the Procurator's Office have the special duty of protecting the political, labour, housing and other personal and property rights and interests of Soviet citizens against any encroachment. The People's Courts examine more than 90 per cent of the civil and criminal cases. All cases must be tried with the participation of People's Assessors.

An important role in protecting Soviet citizens' rights is played by social and volunteer organizations and associations. They take part in supervising the observance of legislation concerning human rights and freedoms and also in measures to provide organizational, financial and technical support for the fullest possible exercise of these rights and freedoms. The forms and methods in which these functions are performed are various. Extensive rights are granted to the working people by the USSR Law on Work Collectives (1983). In accordance with this law, permanent production

conferences have been set up at almost every enterprise, at which employees and management can work out agreements on ways to solve production problems. Citizens' legitimate rights and interests are protected by the Decree of the Presidium of the USSR Supreme Soviet "On the Procedure for Considering Citizens' Proposals, Applications, and Complaints" (adopted in 1968 and amended in 1980) and by the Administrative Code (effective from 1 January 1985). In July 1987, the USSR Suprepe Soviet passed a law on the procedure for appealing in court against the unlawful actions of officials infringing upon the rights of citizens. Another effective type of supervision over the observance of citizens' rights is performed by the People's Inspection bodies, which combine state inspection with volunteer public inspection teams at industrial enterprises, collective farms, institutions and other organizations.

It should be again noted that the protection of Soviet citizens' rights and freedoms is promoted by the entire system of law enforcement, starting with safeguards against encroachments on the USSR's state security and social system and ending with prosecution for violation of the personal rights and freedoms of others.

The USSR Constitution stipulates that, apart from rights and freedoms, Soviet citizens also have duties and obligations. The latter reflect the relations between the individual and society and between the citizen and the state, which develop under socialism.

The duty to abide by the provisions of the Constitution and other laws—that is, to observe socialist legality and law and order—has the ultimate aim of guaranteeing human rights and freedoms. These obligations are intimately connected with the duty to observe labour discipline, adhere to the standards of socialist morality, respect the rights of others, and conscientiously perform one's duties with regard to society.

Socialist property is the wealth of the whole nation, the basis of the well-being of all Soviet people, and the foundation on which the people's economic, social and cultural rights are exercised. It is, therefore, the duty of every citizen to take good care of public property and protect it. Persons encroaching on public property incur criminal liability.

National defence is the sacred duty of every citizen of the USSR. Military service in the ranks of the Armed Forces is an honourable duty of Soviet citizens. Universal military service is the law.

High treason, breach of the oath of allegiance, desertion to the enemy, espionage, or any other action damaging to national defence, are deemed to be grave crimes against the State and are severely punished under the Soviet law.

Soviet legislation states that citizens must give all their efforts and knowledge to society and remember that honest and conscientious work for the good of society is the source of wealth and power of the socialist State and of the rising living standards of the whole nation and of each individual. All Soviet citizens must bring up the younger generation to be hardworking, disciplined and well-organized. They must educate the youth in the spirit of collectivism, respect for the interests of society, a communist attitude to work and socialist property, selfless devotion to the ideas of communism, and principles of proletarian internationalism, respect for all working people regardless of race or ethnic origin, to do everything within their power to consolidate the Soviet state system, to guard state secrets, be vigilant in the face of the enemies of socialism, faithfully perform their civic duties and demand the same from others.

In the 1950s, the socialist countries passed laws on the defence of peace, which prohibit war propaganda on their territories and stipulate that persons disseminating such propaganda would incur criminal liability.

Immediately after World War II, the Soviet Union proposed at the United Nations that war propaganda be banned worldwide. Despite opposition from the representatives of a number of countries, on 3 November 1947, the UN General Assembly adopted a resolution condemning any form of propaganda intended or likely to create a threat to or a violation of peace, or an act of aggression. The Resolution also appealed to all UN members to employ their propaganda and mass media for the purposes of promoting friendly relations between states in accordance with the purposes of the UN Charter and to express an unequivocal desire for peace by all nations.

This resolution became an important international instrument for banning war propaganda worldwide.

As a result of the efforts of the USSR and other peace-loving States, a ban on the propaganda of war, enmity and hatred between nations was included in the International Covenants on Human Rights (1966).

The socialist countries, and the Soviet Union particularly, have always worked for peace, starting with Lenin's famous Decree on Peace of 1917, the first decree ever to call for

banning all wars of aggression and declaring any kind of annexation or other acquisition of foreign territory as a result of aggression, to be null and void.

On the Soviet Union's initiative, a convention on the definition of aggression was concluded in 1933, and in 1965 the general Assembly, also on the USSR's initiative, adopted a Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty. In 1967, at the Twenty-Second General Assembly, the Soviet delegation advanced a proposal which taking into consideration the changes in the world situation, stressed the urgency of defining armed aggression. At the Twenty-Seventh General Assembly, the Soviet delegation proposed a draft entitled "Non-Use of Force in International Relations and Permanent Prohibition of the Use of nuclear Weapons".

A whole series of well-known Soviet proposals on general and complete disarmament constitute still another example of the USSR's and other socialist countries' constructive efforts to achieve lasting peace.

No one can fully enjoy the human rights and freedoms proclaimed in international agreements unless his nation is able to exercise its right to self-determination and do away with colonialism and racism in all their forms and manifestations.

The socialist countries and progressive forces throughout the world have done a great deal to promulgate international laws which would not merely condemn all forms of racism but would demand persecution and punishment of persons guilty of such practices.

In April 1948, the Soviet delegation submitted to the UN Special Political Committee a proposal on the basic provisions of a convention for combating genocide. These provisions formed the basis of a convention adopted by the General Assembly. This initiative of the USSR was the logical continuation of its consistent struggle for the equality of all races and nations, large and small, for the free exercise of the right to self-determination and fundamental human rights and freedoms, and against any kind of racial discrimination.

Of the 159 members of the UN as of 1985, only 87 States signed and ratified the Convention. A number of States, after signing the Convention, have never ratified it (for example, the United States). The importance of this Convention, which was drawn up after the defeat of fascism in World War II, is very great. The atrocities of genocide are today being repeated

in South Africa and also by the Israeli invaders in the occupied Arab territories which Israel seized in June 1967 in defiance of international law.

At the Nürnberg trials, genocide was declared the gravest crime against humanity. International judicial practice has condemned this type of crime, thereby setting an important precedent for the struggle to prevent genocide.

Genocide is the most extreme manifestation of racist ideology. The racist theories forming the ideological foundation of genocide, constitute a formidable threat to humanity. Thus, exposure of the scientific unsoundness of such theories should constitute an important element of the efforts of all progressive forces to prevent genocide.

The socialist countries and progressive forces throughout the world are doing all in their power to make the United Nations scrupulously adhere to the UN Charter, which obliges all member States "to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" (Para. 3, Art. 1).

For example, on the Soviet Union's initiative, the international community adopted on 14 December 1960 the Declaration on the Granting of Independence to Colonial Countries and Peoples, which contains an important principle of international law: elimination of colonialism as an unlawful and vicious system of relations between peoples and, consequently, dismantling of all institutions associated with it.

The tireless efforts of the USSR and other progressive forces have resulted in the formulation of a series of international conventions defining the democratic regime for the exercise of fundamental human rights and freedoms.

It should be emphasized that many of the provisions of this group of international acts were formulated under the direct influence of the legislative practice of the Soviet Union and other socialist states, which have succeeded in providing favourable conditions for the free development of the individual (a good example is the constitutional recognition of the right to work, to rest and leisure, to education, and to social security).

These international agreements provide for an obligation for all UN member States to amend their legislation by including the general democratic standards relating to the fundamental

human rights and freedoms, as formulated in the agreements, and also to apply these conventions within their respective territories.

Application of such international legal acts as, for example, the Universal Declaration of Human Rights (1948), the International Convention on the Elimination of All Forms of Racial Discrimination (1966), and the International Covenants on Social, Political, Economic and Cultural Rights (1966) will undoubtedly create a favourable democratic environment which would ensure human development and respect for his personal dignity. These international instruments are directed against arbitrary rule and violence which are being committed today under various fascist dictatorships and racist regimes. In 1973, for example, the military junta in Chile overthrew the legally constituted Popular Unity government, murdered President Salvador Allende, who had been elected by the people, abolished the Constitution, dismantled all democratic institutions, jailed without trial and tortured thousands of patriots. In November 1975, a group under the UN Commission on Human Rights, which was specially set up to investigate human rights violations in Chile, published its report. Although Chile's new self-appointed President, General Pinochet, denied the group entry into his country, it drew up a report which, on the basis of documents and witness reports, exposed the actual attitude of the Junta to human rights and freedoms. The report named, for instance, the addresses of fifteen torture centres. The Junta's absolute disregard for the most elementary human rights and freedoms cannot but evoke the profound indignation of world public opinion.

In 1983, the world was shaken by yet another monstrous international crime when the U.S. Armed Forces invaded the tiny island State of Grenada, ousted the legally constituted government and installed a pro-U.S. puppet regime. This action was condemned by the UN General Assembly as outright aggression and a flagrant violation of human rights and freedoms.

A great step forward in protecting human rights and freedoms was the signing of the Helsinki Final Act at the historic Conference on Security and Cooperation in Europe (1975). The consolidation of peace and détente in Europe not only directly promotes democracy and social progress on the European continent, it also provides favourable conditions for safeguarding human rights and freedoms and ensuring scrupulous observance of the UN Charter.

The signatory States of the Helsinki Conference are convinced that in the context of building a system of European security, respect for human rights and freedoms should be regarded as an international legal principle of paramount importance. This principle imposes on all States the duty of establishing on their respective territories, a regime based on democracy and freedom which would enable each individual and organization to enjoy their legitimate rights and make their contribution to social progress. Contemporary international law imposes special responsibility on governments to observe human rights and freedoms, opposing any violations of human rights.

The final document of the 1980-1983 Madrid Follow-Up Meeting of the Conference on Security and Cooperation in Europe stated that the universal significance of human rights and fundamental freedoms constitutes an important factor of peace, justice and well-being, which are necessary for the promotion of friendly relations and cooperation among countries regardless of their political, economic, and social systems.

The participants reaffirmed the special importance of the Universal Declaration of Human Rights, the International Covenants on Human Rights, and other relevant documents for their joint and independent efforts to encourage and promote universal respect for human rights and fundamental freedoms. They appealed to all signatory States to act in accordance with these international instruments, and to those countries who have not yet acceded to them, to consider the possibility of so doing.

The socialist countries and all progressive forces firmly oppose any abuse of rights and freedoms to the detriment of the rights and freedoms of other citizens, they oppose any opinion or ideology based on ideas of racial exclusiveness, chauvinism, aggression, slander, misinformation, or interference in the domestic affairs of other States and nations.

This position of the socialist community has had a decisive influence on the formulation in contemporary international humanitarian law, of restrictive rules aimed at the protection of human rights (see, for example, the 1966 International Covenants on Human Rights, the 1966 International Convention on the Elimination of all Forms of Racial Discrimination, and the 1973 Convention on the Suppression and Punishment of the Crime of Apartheid).

One of the major principles of international law is co-

operation between States in achieving the goals and implementing the principles of the UN Charter. Of special significance in this respect, is international cooperation in the cultural field. Such cooperation, based on observance of international law in the interests of developing friendly relations between States, is highly beneficial for the development of culture and mutual enrichment of nations.

Such cooperation must rule out the advocacy of hatred, aggression, militarism, violence, racial or national superiority, or any other ideas which are at variance with the UN Charter or any other generally recognized moral standards (e.g., the International Covenant on Civil and Political Rights of 1966 [Articles 12, 13, 18, and 19] on the liberty of movement, freedom of thought, conscience and religion, and the right to hold views without interference).

These articles are directed against any restrictions of the activities and persecution of democratic forces fighting for peace and social progress. The above-mentioned international instruments on human rights and fundamental freedoms call for the adoption of all possible measures to stop and prevent any violations of democracy and to ban all organizations and prosecute persons whose ideology is based on racial exclusiveness, hatred, war, and immorality.

At present, the United Nations is discussing a draft convention on the freedom of information. In 1960, at the Fifteenth General Assembly, the Third Committee adopted the text of Article 2 of the draft convention, which says, in part, that information must be directed at maintaining friendly relations between nations and at banning the propaganda of war, national, racial or religious hatred, instigation to violence and crime, and infliction of damage to public health and morals. In the discussion, the Soviet delegation proposed that it should be stipulated in the Preamble that the mass media, as a powerful means of influencing public opinion, have a great responsibility before the world for the information they disseminate. Thus, their principal goals should be to spread truthful and objective information directed at maintaining and strengthening international peace and security, promoting friendly relations between States based on respect for the independence and sovereign equality of nations and implementation of the goals and principles of the UN Charter, and counteracting the advocacy of fascist views, racial or national exclusiveness, hatred or contempt.

The USSR has always advocated and continues to advocate

cooperation between States in the field of culture, exchange of ideas, and development of person-to-person contacts. Such cooperation will encourage the mutual cultural enrichment of all nations, the building of confidence between them, and the establishment of peace and good-neighbourly relations, but on condition that such contacts do not encroach on the sovereignty, laws and customs of any country.

Conscientious fulfilment of obligations is a universally recognized principle of international law and a major pre-condition for normal, mutually-beneficial relations between States.

The Preamble to the UN Charter states that the peoples of the United Nations are determined "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained".

Article 26 of the Vienna Convention on the Law of Treaties (1969) states that "every treaty in force is binding upon the parties to it and must be performed by them in good faith". In this connection, of special importance for all European nations is the clause of the Helsinki Declaration on the right of States to establish laws and administrative regulations in accordance with their obligations under international law, specifically in the field of human rights.

Reactionary forces spare no effort to oppose the working out of international legal standards on human rights and freedoms and to prevent their implementation in their countries.

On 20 November 1963, on the Soviet Union's initiative, the United Nations adopted a Declaration on the Elimination of All Forms of Racial Discrimination, in the working out of which the USSR had played a major role.

The Soviet Union was one of the first to sign on 7 March 1966 the International Convention on the Elimination of All Forms of Racial Discrimination. An analysis of this Convention will show that its elaboration was greatly influenced by Soviet legislation. For example, the Convention prohibits not only discrimination according to race, but also according to nationality and ethnic origin. Such principles are also contained in Soviet laws, and they are extremely important for such a multinational State as the USSR. The Convention not only demands the prohibition of all activity based on racial superiority but also the advocacy of such ideas.

Article 2 of the Convention condemns racial segregation and apartheid, and obligates the signatory States to prevent and

eradicate all such practices within the territories under their jurisdiction.

Of special importance for the struggle against racism and its extreme form, apartheid, was the adoption, on 30 November 1973, on the Soviet Union's initiative, of the Convention on the Suppression and Punishment of the Crime of Apartheid. This international agreement was concluded amidst acute struggle between the forces of peace, progress and democracy and those of reaction and fascism. Apartheid is an international crime, and the Convention stipulates that persons, organizations, institutions and representatives of States pursuing the policy of apartheid shall incur international criminal liability. This implies prosecution and punishment of such persons if and when they appear on the territory of any State party to the Convention.

The issue of the flagrant violation by South Africa of the fundamental principles and rules of contemporary international law has never left the General Assembly's agenda, ever since its first session. All attempts by reactionary forces to present this crime as South Africa's internal affair are absolutely groundless from the point of view of international law, since racism constitutes a threat to peace and a gross violation of human rights and fundamental freedoms.

For that reason, the Seventeenth General Assembly adopted a resolution in November 1962 calling upon all member States to apply sanctions to South Africa to compel it to comply with international law. The resolution calls for breaking off diplomatic relations with South Africa or refraining from establishing such relations, closing the ports of the States concerned to all vessels flying the South African flag, enacting legislation prohibiting their ships from entering South African ports, boycotting all South African goods, refraining from exporting goods, including arms and ammunition, in South Africa, and refusing landing and passage facilities to all South African aircraft. The General Assembly set up an ad hoc committee to supervise compliance with these UN recommendations.

However, the measures described above are opposed by the military-industrial complexes of the United States, Great Britain, and several other Western countries whose corporations have vested interests in South Africa and who do not wish to recognize the right to self-determination of the people of Namibia, who have been suffering for many years under the racist jackboot of Pretoria.

The reactionary forces do not want to give up racism, which has been serving them so well as an instrument of domination. For example, the United States representative on the UN Commission on Human Rights fought tooth and nail to block the inclusion of the provision prohibiting discrimination according to national or ethnic origin in the Convention. All his efforts, however, came up against a united front that included the socialist community and developing countries of Asia, Africa and Latin America.

The Convention condemns any propaganda and organized activity that are based on ideas of racial superiority. It declares the dissemination of ideas based on racial superiority to be a crime punishable under international law, and outlaws all such organizations and all financing of and support for such activity.

Today, the banner of peace, freedom and human rights is in the hands of the world forces of democracy, peace and socialism. They exert a decisive influence on all social processes, including the development of international law in the interests of working people throughout the world. The USSR has always maintained that human rights and freedoms can be ensured only if the most basic human right, the right to life in conditions of peace and security, is guaranteed. The Soviet Union's efforts on the international scene are concentrated, above all, on working out an integral system of international treaties and agreements on human rights and freedoms and disarmament based on equality and equal security.

§ 2. The Right to Life and Development

Today, when the threat to humanity's very existence as a result of the arms race unleashed by imperialism is so evident, the struggle for the right to live in peace and security is of vital importance. Without the possibility of each nation exercising its rights, above all the right to self-determination, one cannot seriously discuss human rights and freedoms. On the other hand, human rights, above all the right to life, are inseparable from the right of each nation to progress in peace and security. This interdependence is most clearly reflected in the International Covenants on Human Rights and Freedoms, which constitute an admirable achievement of the international community and are an important part of international humanitarian law.

In discussing the problem of development and of ensuring human rights and freedoms, reference is often made to the so-called third generation of human rights and freedoms—"solidarity rights"—that is to say, human rights which can be ensured only through the joint efforts of individuals, social groups, and States.

However, such a way of putting things is somewhat misleading. A careful examination of man's needs and his right to satisfy them suggests that today it is a question of developing the rights and freedoms which have already been defined by contemporary international law and extending their application so as to resolve the new global problems of humanity's progress.

Can it be said that man's right to life in peace and security has appeared only today in contemporary international law and constitutes a fundamentally new legal phenomenon? Such a blanket statement would, of course, be wrong. Yet today, man's right to life has assumed a new dimension, becoming "the right of rights". One cannot help agreeing with the Association of Japanese Lawyers who stated in their report at the 12th Congress of the International Association of Democratic Lawyers (Athens) in connection with the problem of man's right to peace, that today all human rights are more than ever intimately interdependent.[1] This interdependence becomes especially evident in the face of systematic, large-scale, flagrant violations of human rights and freedoms, which pose a threat to international peace and security (see Resolution 5 [XXXII] of the Commission on Human Rights of 27 February 1976). Specifically, the Resolution emphasizes the right of each individual to life in conditions of international peace and security, the right to enjoy economic, social and cultural benefits, as well as civil and political rights. Respect for and the development of these rights and fundamental freedoms is possible only in conditions of peace.

The right to life in peace and security is both a collective and an individual right. As a collective right, it includes the right of all nations to self-determination, independence, sovereignty, and territorial integrity, which are guaranteed by modern international law. At the same time, Art. 3 of the Universal Declaration of Human Rights and Art. 6 of the

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[1] *For Establishment of a New Democratic International Order*, Athens, IADL, 1984, p. 9.

International Covenant on Civil and Political Rights, speak of the individual's right to life.

What is common to all human rights and freedoms is that their realization requires collective efforts. That is why to isolate the right to peace, the right to development, and the right to a healthy environment, and respect for the universal heritage of mankind into a separate group labelled "solidarity rights" (as was done, for example, at the Peace and Human Rights Conference organized in 1981 by the International Foundation of Human Rights), on the grounds that their implementation requires collective efforts, would be wrong. How can anyone claim that the exercise of the right to a healthy environment requires more collective effort than the right to non-discrimination and equality?

Despite all the new problems which have recently emerged in the struggle for human rights and freedoms, the basic task facing the international community today is to work for the scrupulous observance of existing international agreements in this field, above all the International Covenants on Human Rights, and to encourage accession to them of those States which have not yet done so.

By 1966, elaboration of the International Covenants on Human Rights was completed, and they were ready for signing. The Soviet Union was one of the first signatories. At the ceremony, the Soviet representative stated that his government attaches great importance to these Covenants in the worldwide efforts to strengthen democracy and eliminate violence and arbitrary rule.

In its consistent efforts for peace, the right to life, democracy and legality, to promote the progressive social development of all countries and nations, the Soviet Union in 1973 was one of the first to ratify these Covenants without any reservations. The International Covenants on Human Rights and Freedoms are an important international legal instrument which can have a great impact on the establishment and development of democracy. They serve as a broad basis for concerted action by all democratic forces in the struggle for democracy and social progress. Their elaboration was marked by acute struggle between progressive and reactionary forces over those principles of international law which would best serve the interests of the world's working people.

In 1948, the UN adopted the Convention on the Prevention and Punishment of the Crime of Genocide. Although this international legal document contains a number of restrictions

(for instance, the clause on accession to the Convention only of UN members or parties specifically invited by the General Assembly, or the clause on the non-applicability of the Convention to non-self-governing territories, including trust territories), it is a significant contribution to the struggle of progressive forces everywhere for law and justice.

All this had a marked influence on the formulation of the Covenants' articles on the right to self-determination. The principle of self-determination, a key provision of both Covenants, and the provision stipulating that all nations have the right to freely dispose of their natural resources, were included on the initiative of the USSR, Egypt, Afghanistan, and a number of other States. Obviously, this will promote better conditions for the free exercise of human rights by each individual.

It is only natural that the right of nations to self-determination should be closely linked with the right to freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. The relevant article (Art. 1) underscores that in no case may a people be deprived of its own means of subsistence. The representatives of several Western imperialist states in the Third Committee of the General Assembly opposed the inclusion of this provision, arguing that the Covenants deal with individual rights, whereas the right to self-determination is a collective right. It is obvious, however, that there is no point in discussing individual rights without settling the question of self-determination. The representatives of Great Britain, Belgium and South Africa even declared that in such a case they would not accede to the Covenants, and the US representative threatened to cut off economic aid to the developing countries.

On 3 January 1976 the International Covenant on Economic, Social and Cultural Rights came into effect—after more than twelve years of struggle between the forces of progress and reaction.

Regrettably, most of the industrialized Western countries have not acceded to it (for example, the United States and France, to mention but two). Great Britain, which signed the Covenant, has never ratified it.

The Soviet Union and the other socialist States promptly signed and ratified the Covenant, demonstrating once again their readiness to give practical support to the implementation

of important international laws on human rights protection.

A number of the Covenant's provisions support the demands of the working people of the capitalist countries in their just struggle for better living conditions and social progress.

Of vital importance is Article 6 on the right to work. It not only proclaims this right, but obligates the signatory States to take a number of concrete steps to achieve the full realization of this right. Curiously, during the discussion of this article the representatives of Great Britain and Italy proposed amendments aimed at obviating the need to take concrete steps. And only after many other delegates voiced strong opposition to these amendments did the British and Italian delegates withdraw them. Today, when the capitalist world is in the grip of mounting unemployment, the progressive role of this Article is more evident than ever.

The right to work is not guaranteed in any capitalist country, and in some it is not even mentioned in any legislative act. According to economic forecasts, unemployment in the capitalist countries will continue to grow at an ever increasing rate. For the huge army of migrant workers from the poorer European countries and the Third World who have inundated Western Europe and are forced to accept the most unfavourable conditions, the right to work is not ensured in any way whatsoever.

Article 8 of the Covenant stipulates that the signatory States must guarantee the right of all trade unions and associations to exist and function. Most of the delegates voted in favour of this provision, although the representatives of Britain and the Netherlands introduced amendments aimed at restricting the right to set up local, national and international trade unions.

A significant achievement was the introduction of a clause (Art. 9) on the recognition of the right to social security, including social insurance, which, like the right to work, was formulated on the initiative of the Soviet Union.

The majority of delegates agreed, despite opposition from several Western representatives, on a provision (Art. 13) stipulating the need to introduce generally accessible free education. That education must help combat racial and all other hatred and promote understanding, tolerance and friendship among all nations and all racial, ethnic and religious groups, and promote the activities of the United Nations for peace. The Western delegates were also unsuccessful in excluding from

the Covenant the provision (Art. 14) on the duty of the colonial powers to progressively implement in the territories under their jurisdiction the principle of compulsory free education for all. For the sake of comparison, the Fundamentals of Legislation on Public Education of the USSR and the Union Republics not only proclaim the right to education but provide a system of guarantees of this right for all Soviet citizens. Obviously, Soviet legislation goes much further than the provisions of the Covenant, thus demonstrating the advantages of socialist democracy.

Of considerable importance is the provision (Art. 2) urging the signatory States to achieve progressively the full realization of the right recognized in the present Covenant "by all appropriate means, including particularly the adoption of legislative measures".

The International Covenant on Civil and Political Rights is also of great importance for the struggle of progressive forces for democracy and social progress. To begin with, the Covenant contains the so-called traditional civil and political rights proclaimed back in 1948 by the Universal Declaration of Human Rights.

On the USSR's initiative, the Covenant included the provision that "no one shall be arbitrarily deprived of his life". The representatives of Great Britain, the Netherlands, and several other Western States opposed this clause. The Dutch delegation cited a list of circumstances under which killing an individual would be admissible, for instance, for the purpose of suppressing a riot or rebellion. However, this and other similar amendments were rejected by the majority of delegates, and now the Covenant contains the vital provision that "every human being has the inherent right to life" (Art. 6).

Article 8 proclaims that no one shall be held in slavery or in servitude; it prohibits subjecting anyone to torture or to cruel, inhuman or degrading treatment. Article 9 proclaims that "everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such ground and in accordance with such procedure as are established by law". Moreover, Article 10 states that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

Article 17 declares that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and

reputation". This provision is especially relevant today, when the secret services in the United States, Great Britain and other Western countries employ a ramified system of bugging and telephone tapping to spy on their own citizens. Significantly, in the Soviet Union, Article 7 of the Post and Telecommunications Statute of the USSR stipulates that "all types of postal, telephone and radiotelegraphic communications shall be private".

Under Soviet law, evidence of guilt obtained by unlawful searches, tapping of telephone conversations, etc., cannot be recognized or applied by a court of law; a person or official guilty of violating the privacy of correspondence incurs criminal responsibility. Article 135 of the Criminal Code of the Russian Federation (RSFSR) stipulates that violation of the privacy of correspondence shall be punishable by corrective labour for a term of up to six months, or a fine of up to 30 roubles, or a public reprimand. Under Soviet legislation, the preliminary investigator has no right to make public any facts of a suspect's private life which are irrelevant to the case on which he is charged with a criminal offence.

Article 18 of the International Covenant on Civil and Political Rights proclaims the right to freedom of thought, conscience and religion, and Article 19 states that everyone shall have the right to hold opinions without interference, and to seek, receive and impart information. Article 12 proclaims the individual's liberty of movement within his country and the right to leave or enter any country, including his own.

However, enjoyment of the rights proclaimed in the International Covenants is closely connected with responsibility for their exercise. The main purpose of the Covenants on Human Rights is to provide favourable conditions for the free development of the majority of the people. But the exercise of the rights proclaimed cannot be permitted if they prejudice national security, public order, public health or morals, or the rights and fundamental freedoms of others. Therefore, a number of articles of the Covenants stipulate the possibility of certain restrictions of rights and freedoms, as provided by law, for example, the right to freedom of expression, freedom to receive information, or the freedom of movement.

This means that public order, which serves the interests of the vast majority of the population, may not be violated at the whim of a person or group solely because they hold a dissenting opinion. On the other hand, a social system which

rejects human rights and freedoms as such (for example, a fascist, totalitarian, or racist regime, that is to say, a social system directed against the rights and interests of the majority of the people, is seen, from the viewpoint of international law, as an antidemocratic regime. In such cases, the nation, in accordance with its right to self-determination, can change that regime by any available means in the interests of the overwhelming majority of the people, and set up a social system based on democracy and freedom.

During the discussion of the draft Covenants, a sharp debate arose over their applicability to colonial and dependent territories. In the Commission on Human Rights, Western representatives managed to prevent the inclusion of an article on this question.

In 1950, however, the General Assembly passed Resolution 422 (XV) instructing the Commission to include in the Covenants an article stipulating that the provisions of the present Covenants shall equally apply to the signatory parent States and to all the Non-Self-Governing, Trust and Colonial Territories under their administration or jurisdiction.

Later, after 1960, when international law formulated the demand to dismantle the colonial system, the socialist and developing countries proposed that all mention of colonial territories be removed from international agreements, since their very existence was now outlawed. However, this time the Western delegates spoke out in favour of retaining this mention. After a general vote, however, it was removed.

In the course of drawing up the Covenants, considerable difficulties emerged in discussing the so-called federal articles (28 and 50, respectively). The United States, for instance, insisted that the accession of a particular State to the Covenants, does not necessarily mean they should apply to their entire territory. Moreover, part of a federal State may be altogether exempt from the effects of the Covenants. This position was contrary to established treaty practice, in accordance with which a federal State is responsible under assumed international obligations for its entire territory as a whole.

At the Commission's 10th session, the Soviet delegation proposed the following amendment: "The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions." This wording was accepted and included verbatim into the Covenants as Articles 28 and 50, respectively.

There was also lack of agreement on the question of reservations. The British delegation attempted to include an article on reservations, on the pretext of which it would become possible for any State to evade honouring its obligations. An amendment was even introduced under which a State could use a reservation to suspend observance of any provision of the Covenants. The Soviet representative firmly opposed this amendment. Of course, any party to a multilateral treaty is entitled to introduce provisos, but on condition that they do not conflict with the general purposes of that treaty. Here, however, introduction of a special article on reservations could only complicate matters and create a loophole for abuses. The majority of delegates supported the Soviet objection, and the amendment was withdrawn.

Contemporary international humanitarian law regards man's right to life not in isolation from other rights and freedoms, but in their context. Today the right to life cannot be guaranteed without curbing the arms race, without an arms freeze and ultimately disarmament. The right to life is inseparable from human development and satisfaction of vital human needs, which, in turn, is impossible without cooperation between States in ensuring the right of nations to self-determination and in resolving such global problems as the arms race, food shortages, disease, environmental pollution, the energy crisis, and in exploring and developing the World Ocean and outer space.

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The twentieth century has been marked by the awakening of many nations to independent development, the growth of self-awareness, and the increasing contribution of each nation to world culture.

The right of nations to self-determination, proclaimed by the French Revolution as an ideal, is today becoming a universally recognized principle of international law (Art. 1 of the UN Charter). This means not only the right of each nation to decide its own future, but also the state system which it considers most suitable for its development at a particular stage. This also implies the duty of all other States and nations to assist that nation in exercising its right to self-determination. However, that nation is not entitled to exercise its right to self-determination at the expense of the rights of another nation.

A nation seeking self-determination can win the greatest international recognition of its rights only on condition that it respects the rights of other nations to self-determination.

Today, this concept has been embodied in numerous international legal instruments, including the UN Charter. It has become the basis of international relations in the world today. Unfortunately, that does not mean this principle is never violated. There are still countries that forcibly dominate nations struggling for self-determination and which unlawfully seize territories belonging to others. Moreover, racist regimes are artificially restraining nations from developing according to their needs. However, the violation of a principle does not mean its abolition, and the international community, as represented above all by such organisations as the United Nations, are making efforts not only to prevent such violations, but to define forms of responsibility for actions qualified as international crimes.

In recent years, the right to self-determination has been increasingly identified with the right to development, including the development of each individual.[1]

Whereas in the 1960s, development was interpreted only as economic development, from the late 1960s and early 1970s it was regarded as a factor promoting observance of human rights and a necessary addition to social and cultural development. Similarly, whereas before the right to development was interpreted as the right of a particular State or nation, today it is also regarded as the right of individuals to development.

In our opinion, the fundamental document containing a more or less generally recognized definition of development is the Declaration on Social Progress and Development, adopted by the UN General Assembly in 1969.

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[1] See: Héctor Gros Espiell (Special Rapporteur), "Implementation of United Nations Resolutions Relating to the Right of Peoples under Colonial and Alien Domination to Self-Determination" (UN. Doc. E/CN. 4/Sub. 2/405, E/CN. 4/Sub. 2/404); I. Blishchenko, "Background Paper Prepared for the Seminar on the Effects of the Existing Unjust International Economic Order on the Economies of the Developing Countries and the Obstacle that This Represents for the Implementation of Human Rights and Fundamental Freedoms", HR/Geneva/ 1980; BP. 4; F. Rigaux, "Le droit des peuples à l'autodétermination et la souveraineté permanente sur les ressources dans le contexte de l'établissement d'un nouvel ordre économique international", Doc. UNESCO 59-78 (Conf. 630/S), p. 25.

Article 2 of the Declaration proclaims that "social progress and development shall be founded on respect for the dignity and value of the human person and shall ensure the promotion of human rights and social justice, which requires: (a) the immediate and final elimination of all forms of inequality, exploitaton of peoples and individuals, colonialism and racism, including nazism and apartheid and all other policies and ideologies opposed to the purposes and principles of the United Nations; (b) the recognition and effective implementation of civil and political rights as well as of economic, social and cultural rights without any discrimination".

It is obvious that the chief obstacles to development in today's world are inequality, exploitation, war, colonialism, and racism. Consequently, today development means, first of all, elimination of these obstacles, and freeing society from inequality, exploitation, the arms race, all forms of dependence, and manifestations of racial or national exclusiveness and domination. The Marxist interpretation of development does not divorce the development of society from that of the individual.

One of the greatest hazards in the policy of development is the tendency to attach excessive importance to the material aspects of growth. In one's concern for the choice of means, one can lose sight of the ultimate goal. In this case, human rights would be forgotten and man would be regarded as a mere instrument of production rather than as a free individual whose well-being and cultural development, the growth of production is meant to serve. Today, the concept of development cannot be applied solely to the developing Third World countries, not only because their development is closely connected with the restructuring of the entire system of international economic relations which comprises also the industrialized capitalist countries and socialist States. Development is a logical pattern of every society, it is an objective law of social progress, the centerpiece of which is man. All countries should work to provide the most favourable conditions for human development.

The question of the right to development was raised by the developing countries—specifically, by the Non-Aligned Movement. On the initiative of the non-aligned States, supported by the socialist countries in 1983, a working group of governmental experts was set up. The group presented a report, in which the right to development was interpreted as both the right of an individual and the right of nations, i.e., as an

integral part of the right to self-determination.[1] The report defined the individual as "the central subject" of the right to development, which, in our opinion, is not quite correct, since it would imply contrasting it to the nation as the subject of international law.

The report notes the need to recognize the right and duty of every State to shape and implement a policy of development, which should lead to the realization by each individual of his potential and to the prosperity of the population as a whole.

Of fundamental importance is the report's conclusion that the right to development implies an international order based on full respect for the principles of international law as set forth in the UN Charter. The report emphasizes that all States should unite in promoting development and eliminating all obstacles to it. In pursuing a policy of development, all States should observe the following principles: equal rights and self-determination of peoples; equality of opportunities for the development of all nations and individuals within nations; sovereignty, territorial integrity and political and economic independence of States; sovereign equality of all States; non-aggression; peaceful settlement of disputes; non-intervention in matters which are essentially within the domestic jurisdiction of any State; mutual and equitable benefit; peaceful co-existence; international cooperation for development; promotion of international social justice; remedying of injustices which have been brought about by force and which deprive a nation of the natural resources necessary for its normal development; no attempt to seek hegemony and spheres of influence; fulfilment in good faith of international obligations; respect for human rights and fundamental freedoms; free access of land-locked countries to and from the sea; and permanent sovereignty over natural wealth and resources within the framework of the above principles.

Finally, the report states that "for the purpose of the effective enjoyment of the right to development and for the full realisation of all human rights, it is necessary to take, as a matter of priority, adequate measures towards the establishment of a new international economic order, as envisaged

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[1] Report of the Working Group of Governmental Experts on the Right to Development. UN Doc. E/CN. 4/1984/13, Annex II, 14 November 1983, International Law Association, Paris Conference (1984); A Paper of the Netherlands Branch of the ILA, pp. 11-13.

in the Declaration of the Establishment of a New International Economic Order, (1) in the Programme of Action on the Establishment of a New International Economic Order, (2) in the Charter of Economic Rights and Duties of States; (3) and in other relevant United Nations resolutions".

Although we cannot agree with all the conclusions of the report, it constitutes a sound basis for further research in this important subject.

There are two points of view in contemporary literature as to whether the right to development constitutes an independent branch of international law. For example, the French lawyer, M. Flory, believes that the right to development is the youngest branch of international law—hence its incompleteness and certain drawbacks. Flory describes it as a result of an alliance between international law and international economic law.[1] The Senegalese lawyer K. M'Baye believes that the right to development is the aggregate of means meant for the realization of various rights—specifically, economic, social and cultural, and that there is no need to establish a new branch of international law. The right to development is provided for by the UN Charter, whose Preamble proclaims that one of the purposes of the United Nations is "to promote social progress and better standards of life in larger freedom".

Still, such jurists as M. Flory, C. Collier, J. Foyer, P. Mertsi, and M. Bettati believe that what makes the right to development different from other rights is that it is a set of exceptions to the general rules—exceptions which are not something new and autonomous, but rather a temporary compromise under which the general rules set by the Western countries must include contradictory exceptions reflecting the presence of the developing countries.[2] However, this approach cannot be considered scientific, since it is a question of consistent implementation of generally recognized rules and principles of modern international law, not just a set of exceptions. We agree with the Senegalese lawyer Layti N'Diaye, who believes that the right to development constitutes above all the collective right of peoples and nations to political, economic, social and cultural progress, the right to overcome economic back-

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[1] M. Flory, "Inégalité économique et évolution du droit international", Colloque d'Aix en Provence: Pays en voie de développement et transformation du droit international, 1974, p. 39.

[2] M. Betatti, "Le droit de développement au plan international", Académie de droit international, 1979 (Colloque 16-17 Oct.), the Hague, 1980, p. 286.

wardness and dependence, to peace and international security and to equitable cooperation between states.[1]

It would be wrong to reduce the right to development merely to issues of health care, food, housing, employment, working conditions, social security, rest and leisure, and individual freedoms, as was done at a discussion in the Commission of Human Rights.[2] This right is much broader. It is, in fact, the fundamental principle of contemporary international law and international relations. The right to development has already been embodied in a number of key international instruments, such as the UN Charter, the Universal Declaration of Human Rights, the International Covenants on Human Rights, and various other declarations and covenants adopted by the United Nations.

The Declaration on the Establishment of a New International Economic Order (1974) states that such an order should be based on full observance of the principle of self-determination of all peoples, the right of each country to establish the economic and social system which it considers to be most suitable for ist own development, without suffering any discrimination as a result of such a choice, and also full inalienable sovereignty of each state over its national resources and economic activity.[3]

Professor F. Rigaux (Belgium) declares in his study undertaken for the UNESCO, that the right to self-determination is a foundation on which it would be possible to build a new international economic order.[4]

The study by Professor Héctor Gros Espiell (Uruguay) contains a conclusion which is of fundamental importance for understanding the right of peoples to self-determination as the right to development. Prof. Espiell believes that the legal recognition and effective implementation of the right to full development of peoples struggling for self-determination—a right which, of course, is likewise enjoyed by States, especially the developing States—can only be achieved given the recognition and implementation of the right of peoples to self-determination. The Special Rapporteur is obsolutely right when he

[1] Layti N'Diaye, "The Non-Aligned States' Contribution to the Development of International Law", Cand. Sc. Dissertation, Moscow, 1984, p. 152 (in Russian).

[2] See: UN Docs. E/1979/36, E/CN. 4/2347, p. 26.

[3] Res. 3201 (S—VI) R.A., n. 4, a, d, e.

[4] F. Rigaux, "Le droit des peuples à l'autodétermination et la souveraineté permanente sur les ressources dans le contexte de l'établissement d'un nouvel ordre économique international (Doc. UNESCO 59-78 (Conf. 630 [S]), p. 25).

says that the implementation of the right of peoples to self-determination includes not only the achievement of complete independence or other similar legal status of peoples under colonial and alien domination, but also the recognition of their right to support, consolidation and development of their full legal, political, economic, social and cultural sovereignty. From this viewpoint, the right to self-determination should be regarded as constantly in force, not being terminated after the achievement of political self-determination, but continuing in all fields, including the economic, social and cultural.[1]

The right of peoples and nations to self-determination naturally implies and includes the duty of all States and nations to cooperate in providing conditions for the fullest realization of this right. However, this duty does not cancel out or replace the existing system of rules and principles of modern international law, since the full realization of the right to self-determination can be most effective only if the other rules and principles of contemporary international law are observed, including the principle of respect for national sovereignty and non-interference in the domestic affairs of other countries.

A good example of this is the efforts made by the international community to ensure the right to development of the Palestinian Arabs, including their right to establish their own State, or the aid rendered to the people of Namibia. This duty of cooperation recorded in international law not only logically proceeds from its generally recognized principles, but constitutes an independent principle of international law embracing all fields of human endeavour, not just the economy. The principle of international cooperation set forth in the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of United Nations (1970) extends the duty of cooperation to economic, social, cultural, technological and commercial relations in accordance with the principles of sovereign equality and non-interference. The object of such cooperation is the protection of international peace and security, ensuring universal respect for and observance of human rights and fundamental freedoms for all, and the

[1] Héctor Gros Espiell (Special Rapporteur), "Implementation of United Nations Resolutions Relating to the Right of Peoples under Colonial and Alien Domination to Self-Determination" (UN Doc. E/CN. 4/Sub. 2/405, Vol. 1); see also: E/CN. 4/SUB7 2/404.

elimination of all forms of racial discrimination and religious intolerance.

It is hardly surprising, then, that the right of peoples to self-determination is the universal fundamental condition of the exercise by every individual of his political, civil, economic, social and cultural rights. This principle is embodied in Art. 1 of the International Covenants on Human Rights. What is meant is the specific content of this right to self-determination and development, since self-determination is development, which can be rapid, slow, encountering obstacles, but which should be assisted by all means available on the basis of and within the framework of contemporary international law. The realization of the right to self-determination of peoples and assistance to such peoples by all other participants in international relations, implies the duty to take only such actions which do not encroach upon the right to self-determination and development of other members of the international community. Considering all this, it can be said that the right to development is both the aggregate of means and "a synthesis of a large number of human rights",[1] but it cannot be reduced only to economic and social rights.

The existence of the right to development in contemporary international law does not mean that there is no need for special elaboration of the realization of this right, a more clear-cut definition of its content, the specific consequences and possibilities of the realization of the right of peoples to self-determination at all its stages and in all its forms, and the correlation of this right with obligations arising from it at certain stages of self-determination. This makes it possible to take into account the aspects of the right to self-determination which earlier escaped the attention of jurists.[2] That is exactly what the UN General Assembly did when it adopted on December 4, 1986, the Declaration on the Right to Development, which has been drafted by an ad hoc working group of governmental experts of the UN Commission on Human Rights.

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[1] UN Doc. E/CN. 4/1334, p. 36; J. Rivero, "Sur le droit au développement", Doc. SS-78/Conf. 630/2), p. 3; Héctor Gros Espiell, "El Derecho al Desarrollo como un Derecho de la Persona Humana", Doc. SS-78/Conf. 630/2, p. 18.

[2] See, for example, UN Draft Medium-Term Plan (1984-1985), Part 2, XIII, "Peace, International Understanding, the Freedom of the Peoples and Human Rights", "UNESCO's Contribution to Peace and Its Tasks with Respect to the Promotion of Human Rights and Elimination of Colonialism and Racism" (UNESCO Thirty-Second Session, October 1983).

Therefore, when we speak of the rights of peoples, we mean the right of peoples to self-determination, the right of peoples to retain their ethnic and cultural identity, the right of peoples to peace and cooperation, and the right of peoples to development in any direction and in the form chosen by them. This approach has been defined by the international community at the UN and UNESCO in their resolutions and decisions and also at a number of international forums of non-governmental organisations. A good example of the latter is the Universal Declaration of the Rights of Peoples[1] drafted by the Foundation of Freedom and Liberation of Peoples. It proclaims the right to existence and self-determination, the economic rights of peoples, the right to culture and to a healthy environment and natural resources, the rights of ethnic minorities. It also implies the guarantees of these rights and sanctions for their violation.

But the development of society is impossible without the development of the individual, i.e., without providing favourable conditions for his progress and satisfying his needs. The international community is called upon to promote this process in accordance with and on the basis of contemporary international law. Here we confront the difficult question of the correlation of international and national law and the correlation of human rights and international law. The existence and development of sovereign independent States is an objective reality. The sovereignty of these States implies their exclusive jurisdiction over their territories, specifically in relation to their citizens.

In respect to the right to development, Western jurists have again raised the question of whether the individual is a subject of international law.[2] In so doing, they refer to current international treaties and agreements on human rights and freedoms, resolutions adopted by various UN bodies, and the right of natural persons under several international agreements to complain to international organizations.

However, the practical experience of all States shows that an international agreement can have force within a certain

[1] For more detail see: Antonio Cassese, "The Self-Determination of Peoples", in: *The International Bill of Rights*, Ed. by Louis Henkin, Columbia University Press, New York, 1981, pp. 92-113; "Pour un Droit des Peuples", *Essais sur la Déclaration d'Alger*, Publiés sous la Direction de A. Cassese et Ed. Youve, Berger-Levault, 1978.

[2] Economic and Social Council, Official Records, UN, E/CN, 4/1334, pp. 45, 53-54.

country's territory only if, in accordance with that country's constitution, the organ of State power or administration approves (ratifies) that agreement, that is to say, gives it the force of a national legislative act. Only in such a case does a natural person, legal person, or State establishment enjoy all the rights and assume the responsibilities under that international agreement. One can cite dozens of examples of individuals incurring criminal responsibility for violation of international agreements which have come into legal force for that particular State. There are also many examples of both natural and juridical persons receiving a right under an international agreement—a right to which they were not entitled under current national legislation. However, such precedents have never turned individuals into subjects of international law. Individuals have enjoyed rights and borne responsibilities directly under international agreements only when these agreements were ratified by competent national bodies and made part of the national legislation. Since there has recently appeared a great number of international agreements on human rights and freedoms—which fact testifies to the growing humanitarian trend in international law—there is an urgent need to work out common principles of correlation of international and national law.

Elimination of all obstacles in international relations obstructing effective international cooperation in all fields of socio-economic development is an important condition of the fullest possible exercise of human rights by every individual, especially in the developing countries.

In this context, it should be stressed that one cannot artificially separate one group of human rights from another, much less contrast them. The prominent Dutch jurist Theo C. Van Boven wrote that human rights cannot be seen as separate elements which could be arranged in a certain order according to their importance. They essentially constitute an indivisible whole and reflect the fundamental integrity and uniqueness of man.[1] That was the approach adopted by the Soviet Union during the drafting of the Covenant on Human Rights and Freedoms as a universal international agreement including political, civil, social and cultural human rights. The socialist doctrine on human rights and freedoms proceeds from the

[1] See: Theo C. Van Boven, "Partn rs in the Promotion and Protection of Human Rights", *Netherlands International Law Review, Vol. 24, Special Issue, 1/2, 1977, Sijthoff, Leyden.*

principle that the granting and guaranteeing of economic, social and cultural rights and freedoms enables a person to make the fullest use of his political and civil rights and to contribute to the development of society. Jurists and legislative practice in the socialist countries have always emphasized that human rights in socialist society are not reduced and cannot be reduced merely to economic rights and material prosperity. In socialist society, political rights are regarded not as abstract, independent values, but chiefly functionally, that is to say, as a means of giving every working man and woman a say in running society, i.e., a guarantee of the democratic character of the State[1] and of social development.

For this reason, while attaching great importance to economic, social and cultural rights and having essentially elaborated this concept as a key element of human and social development, the socialist countries have always equated the development of society with proclaiming, guaranteeing and developing political and civil rights.

The granting and guaranteeing of human rights and freedoms, and the issue of human rights in international treaties and agreements drafted, specifically, within the United Nations is an essential condition of development and constitutes an integral part of the strategy of development. It should be borne in mind that the concept of human rights under contemporary international law is aimed at development and against violence, arbitrary rule, or abuse of rights at the expense of development.

§ 3. The International Mechanism of Protection of Human Rights

The problem of the relationship between the individual and society is of a class nature, and it is at the core of ideological and political struggle on the international scene. The

[1] See, for example. J. Simonides, "Wklad Polski w Sztaltowaqie miedzunarodowego modelu praw czlowieka", in: *Speawy miedzynarodowe*, 1977, No. 10, pp. 19, 21; A. Michalska, *Podstawowe prawa czlowieka w prawie wewnętrznym a Pakty Praw Czlowieka*, Warszawa, Wyd-wo praw., 1976, p. 37; W. Skrzydło, "O prawach politycznych obywateli PRL", *Nowe Drogi*, 1976, No. 10; *Socialist Concept of Human Rights*, Budapest, Akad. Kladó, 1965; J. Grospic, J. Balncž "Koncepce lidských a občanskych prav od velkého Zijna po součastnost", *Pavnik*, 1977, No. 10; J. Kuczynski, *Menschenrechte und Klassenrechte*, Berlin, Akademie-Verlag, 1978; V. M. Chkhikvadze, *Socialism and Human Rights: Lenin's Ideas and the Present Day*, Moscow, 1979 (in Russian).

advances achieved by the socialist countries in the economic, social and cultural fields make it difficult for Western bourgeois ideologists to advertize the advantages of capitalism. Western myths of "the society of equal opportunities", "the affluent society" and the like, are becoming less and less popular both in the industrialized capitalist countries and in the newly-independent States having to choose their road of development. Mass unemployment in the capitalist countries, the ecological crisis, the mounting arms race, and other negative phenomena, are contributing to disillusionment. This situation compels Western bourgeois sociologists to seek other means of ideological warfare against socialism, and in recent years they have been pinning special hopes on the human rights issue.

Western propaganda claims that the fundamental difference between socialism and capitalism is not in their contrasting socio-political systems, but rather in human rights issues. Western ideologists allege that under socialism the individual has no personal rights, only duties to society, whereas in the capitalist countries the individual enjoys numerous personal rights. Moreover they assert that the socialist countries have always opposed any international mechanism for the protection of human rights.

What they do not say is that it was the socialist concept of human rights that influenced the elaboration and establishment of the international mechanism for the protection of human rights, which today plays an important role in implementing relevant international agreements.

From the very first days of the United Nations, the USSR has scrupulously adhered to the UN Charter and has spared no effort both to ensure a stable world peace and to promote human rights. The Soviet Union believes that only in lasting peace can mankind expect to resolve the vital problems of economic and social development and to guarantee fundamental human rights, first and foremost the right to life.

At the same time, a number of States have been attempting for a long time to use the machinery of international organisations, above all the United Nations, to wage an ideological war against the socialist countries and the national liberation movements, and to disguise the true aims of their own foreign policy. Throughout the entire history of the UN, a number of Western countries have been trying to substitute the issue of human rights in general and the question of so-called human rights abuses in the socialist countries, in particular, for

all other issues of vital importance to humankind as a whole (for instance, disarmament, universal peace, and economic cooperation). Not infrequently, their policies in the field of human rights conflict with the principles and standards of contemporary international law. In the 1950s, for example, the West tried to interfere in the domestic affairs of Bulgaria, Hungary, Romania and several other socialist countries under the pretext of protecting human rights which were supposedly being violated in those countries. In the mid-1970s, a rabid anti-Soviet campaign was mounted in several Western countries under the same pretext.

Certain Western political scientists and public figures have suggested various schemes for reorganizing the UN system for the promotion of respect for and advancement of human rights. They claim that it is ineffective in its present state. With the aim of encroaching upon the State sovereignty of the socialist and developing countries and removing economic, social and human rights issues from the jurisdiction of their governments, these Western ideologists have advanced the idea that natural persons should be recognized as subjects of international law. They suggest setting up supranational bodies which would arbitrate between a State and its citizens. Much publicity, for instance, has been given to the plan advanced by Louis B. Sohn (USA), which provides for setting up within the UN a special organization to supervise human rights observance, and the idea advanced by John Humphrey (Canada), who suggests that international law should directly take upon itself the task of protecting the individual's human rights.

A number of States advocate setting up within the United Nations the post of High Commissioner for Human Rights. To a certain extent, this suggestion reflects the theory of functionalism, the author of which in its present form is D. Mitrani.

Functionalists believe, for example, that international relations should be depoliticized, that the greater part of economic and social issues examined by international organizations should be removed from the jurisdiction of national governments, that national, State sovereignty hampers the peaceful satisfaction of the needs of mankind, and that world peace can be attained only through immediate elimination of State sovereignty and establishment of a world government.

The idea of setting up within the United Nations the post of High Commissioner for Human Rights is widely supported in a number of Western countries. It was first suggested by the

government of Uruguay back in 1950. According to this idea, the High Commissioner should be granted sweeping powers, including the right to examine the situation in any country and conduct investigation on the spot, and also the right to receive and examine complaints from individual citizens and from non-governmental and inter-governmental organizations. In its resolution 421 F (V), the Fifth General Assembly recommended that the UN Economic and Social Council (ECOSOC) request the Human Rights Commission to examine Uruguay's proposal in considering questions concerning petitions and compliance with the International Covenants on Human Rights.

At the 7th Session of the Commission on Human Rights in 1951, the delegation of Uruguay submitted a detailed draft document, which, however, was revised at the Commission's 10th Session in 1954. After that, for a long time the issue of setting up the Office of the United Nations High Commissioner for Human Rights did not appear on the UN agenda.

However, starting with the Twentieth General Assembly (1965), the question was again brought up, and several draft resolutions were considered.

All together, the question of establishing the Office of the High Commissioner for Human Rights was discussed in the United Nations for approximately thirty years. Over that period, proposals had undergone a number of changes concerning both the High Commissioner's activity and the sphere of his jurisdiction. Such a protracted period of discussion reveals the profound differences in the positions of the UN members on this issue—differences not only between advocates and opponents of establishing such an office, but among its advocates as well. For instance, whereas the original draft submitted by the delegation of Uruguay to the 7th Session of the Commission on Human Rights provided that the Office of High Commissioner would be set up as a body concerned with the implementation of the Covenants on Human Rights,[1] ECOSOC draft resolution 1237 (XLII) provided for the establishment of an entire department of the UN High Commissioner for Human Rights. However, draft resolution A/C.3/32/L.25, although referring to the recommendations made in resolution 1237 (XLII), proposed again that the office of the High Commis-

[1] Although neither the Covenants nor the Optional Protocol to the International Covenant on Civil and Political Rights contain even a mention of the office of High Commissioner.

sioner should consist of one person. There were many other disagreements. Furthermore, several States supporting the idea of establishing the office of High Commissioner, agree with it only "in principle" or declare their readiness only to consider the question and to examine possible solutions.

A close scrutiny of ECOSOC resolution 1237 (XLII), to which so many references have been made over the last ten years, reveals the following contradictions.

According to the resolution,[1] the High Commissioner must be vested with such authority which would allow him to pronounce his opinion on various documents relating to the field of human rights, and intervene in the domestic affairs of States. For example, the resolution states that "the High Commissioner ... shall report to the General Assembly through the Economic and Social Council on developments in the field of human rights, including his observations on the implementation of the relevant declarations and instruments adopted by the United Nations and the specialized agencies, and his evaluation of significant progress and problems..." (p. 2d). The High Commissioner must "assist in promoting and encouraging universal and effective respect for human rights and for fundamental freedoms..." (*Ibid*). Moreover, the draft resolution proposes that the High Commissioner "shall have access to communications concerning human rights..." (p. 2c), which are actually letters from individuals and nongovernmental organizations. Apart from complaints, such letters often contain unsubstantiated defamatory statements about governments. The draft resolution also provided that the High Commissioner "may render assistance and services to any State Member of the United Nations..." (p. 2b). Yet such assistance and services were defined only in the most general terms.

It should be pointed out here that some of the provisions of the draft resolution conflict with the rules and principles of modern international law. For example, it is generally recognized that questions pertaining to the implementation of international agreements fall within the jurisdiction of the States Parties to such agreements and also of bodies specially set up on the basis of such agreements or provided for therein. No other organizations have the right to interfere in such

[1] The Chairman of the 22nd Session of the Commission on Human Rights appointed, without due consultations with member States, a working group consisting of representatives of Austria, Costa Rica, Dahomey, France, Jamaica, the Philippines, Senegal, Great Britain, and the United States, to examine the question of establishing the office of the High Commissioner.

agreements. Since none of the current instruments of international law on human rights contain any mention of the High Commissioner, his functions with regard to such international instruments (p. 2d of the draft resolution) have no legal basis.

Another serious infringement upon the UN Charter is the attempt to invest the High Commissioner with essentially the same powers as are granted, under the Charter, to the General Assembly. Article 13 of the Charter states that "the General Assembly shall initiate studies and make recommendations for the purpose of ... promoting international cooperation in the economic, social, cultural, educational and health fields, and assisting in the realization of human rights and fundamental freedoms..." The almost complete identity of Art. 13 of the Charter and p. 2 of the draft resolution means that the powers of the High Commissioner in matters of human rights would duplicate those of the General Assembly. This would obviously undermine the authority of the principal organ of the United Nations. Therefore, we believe it would be wrong for the General Assembly to establish such an office by a simplified procedure (majority vote).

As to complaints lodged by private persons (p. 2c of the draft resolution), of all the UN bodies responsible for promoting respect for human rights and freedoms, only the Sub-Commission on Prevention of Discrimination and Protection of Minorities is empowered, pursuant to ECOSOC resolution 1503 (XLVIII), to appoint a working group of five of its members. It would convene once a year for ten days prior to the Sub-Commission's regular session to examine and bring to its attention all reports of flagrant violations of human rights and fundamental freedoms on a worldwide scale. Similar powers are granted to the Committee of Experts on the Application of Conventions and Recommendations, which was set up within UNESCO.

The International Labour Organization (Arts. 24-25, 26-29, 31-34 of its Charter) provides for a system of procedures for examining complaints, specifically by the Committee on Conventions and Recommendations, the Freedom of Association Committee, and also the Inquiry and Conciliation Commission. These bodies supervise the implementation by Member States of ILO conventions and examine complaints lodged by States and associations with the consent of the State concerned.

In adopting resolution 1503 (XLVIII), ECOSOC resolved to revise it after the coming into force of the International Covenants on Human Rights and the Optional Protocol. There-

fore, the resolution was actually conceived as a temporary one. Investment of the High Commissioner with the authority to examine complaints lodged by private persons and pronounce his judgements on them, would contradict the generally recognized principle that a private individual is not a subject of international law. Such authority would inevitably extend to matters within the internal jurisdiction of States, which would be a direct violation of para. 7, Art 2 of the UN Charter.

Despite efforts of the advocates of establishing the office of High Commissioner to win over vacillating States, especially among the developing countries, the Twenty-Eighth General Assembly removed the question from its agenda as an object of incessant sharp criticisms and bitter controversy.

Paragraph 2 of Resolution 3136 (XXVIII) resolved "to keep under review the consideration of alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms". Thus, the resolution (with 75 countries voting in favour, 25 abstentions, and no votes against) provides for the consideration of alternative approaches to the proposal on setting up the Office of High Commissioner. In the light of this resolution, renewed attempts by several Western countries in the late 1970s to again bring up at the UN the question of setting up the Office of High Commissioner, appear strange at the very least.

The United Nations already has an established network of bodies for international protection of human rights, including the Commission on Human Rights, the Commission on the Status of women, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and a number of committees, working groups, and sub-committees. Human rights issues are also systematically examined by two of the UN's principal bodies—the General Assembly and the Economic and Social Council, and one of its principal committees—the Third Committee. Moreover, certain aspects of human rights are also examined by the Special Committee on Apartheid and also the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. Furthermore, back in 1946, the ECOSOC advised the UN Secretary-General to take measures to collect, review and disseminate information on the activities of all

UN members concerning human rights issues.

This network of bodies, one of the most ramified in the UN, ensures examination, on the basis of the Charter, of all human rights issues. At the same time, in accordance with draft resolution A/C.3/32/25, the High Commissioner would have performed the advisory functions which are within the competence of these bodies, the General Assembly in particular. The bodies supervizing the observance of human rights and freedoms, will always be more independent and authoritative than a High Commissioner for Human Rights. For example, the Commission on Human Rights consists of 32 experts, the Sub-Commission on Prevention of Discrimination and Protection of Minorities comprises 26 experts, and the Committee on Elimination of Racial Discrimination has 18 experts. Also, the Charter proclaims the principle of proportional representation of international cooperation agencies in the promotion of respect for human rights and fundamental freedoms. The establishment of the Office of the High Commissioner would violate this principle, since a single official cannot be a representative agency for international cooperation.

The establishment of the Office of the UN High Commissioner for Human Rights ostensibly to coordinate the activity of UN bodies, would also contradict General Assembly resolution 32/197 of 20 December 1977 which charged the ECOSOC with the task of ensuring "the over-all co-ordination of the activities of the organisations of the United Nations system in the economic, social and related fields..." (p. 3).

Finally, the establishment of a new administrative office for human rights within the UN would be tantamount to an attempt to replace the bodies of international cooperation with a bureaucratic mechanism which could serve to influence UN policies in this field. The States which support the idea of establishing the Office of the High Commissioner are in effect casting doubt on the UN's ability to resolve human rights issues and indeed on all the positive results achieved by the international community in this area throughout the history of the United Nations. For example, during the discussion of this question, the U.S. delegation declared that the existing structure of the UN was incomplete because it had no central body for examining major human rights issues which would be an objective and qualified source of assistance to member States in decision-making in this field. Several other delega-

tions made similar statements on the ineffectiveness of the UN in promoting human rights and fundamental freedoms.[1]

True, there have been cases in the United Nations when offices of High Commissioner were established to expedite and improve the solution of certain problems.

In 1951, for example, the General Assembly approved the establishment of the Office of the United Nations High Commissioner for Refugees (UNHCR), granting the High Commissioner certain powers in the protection of human rights and freedoms. Specifically, he could render assistance to governments and private organizations in ensuring voluntary repatriation of refugees or their assimilation. The High Commissioner's activity was based on General Assembly and ECOSOC directives. The statute of the High Commissioner provided for annual reports on the UNHCR's activity. The UNHCR grants international protection to persons who have abandoned their countries or permanent residence as a result of political events. It also aids governments, on their request, in solving the problems of refugees who were granted asylum. At present, the UNHCR faces the most acute problems ever encountered concerning approximately one million refugees in Africa. It sends relief to the governments concerned in an effort to provide the refugees with subsistence rations and conducts, jointly with volunteer organizations, relevant research. In the context of the present problems facing the United Nations, the UNHCR is seeking to achieve economic and social integration of refugees within its jurisdiction. In accordance with the UN Charter and relevant General Assembly resolutions, the Office of the United Nations High Commissioner for Refugees has been granted a mandate which includes supervising implementation of the Convention on the Status of Refugees and Stateless Persons (Art. 35) and the additional protocol of 4 October 1967 (Art. II).

On 19 May 1967 the General Assembly set up the United Nations Council for Southwest Africa, later renamed the UN Council for Namibia. The Council's principal function was to administer Namibia pending the granting of independence. To facilitate the Council's functioning, the General Assembly appointed a UN Commissioner who was to contact the South African authorities and define without delay the procedure

[1] "Question of the Establishment of a United Nations High Commissioner for Human Rights or Similar Machinery", UN General Assembly Document A/10235 of 7 October 1975. Report of the Secretary-General, Para. 159-172, pp. 49-51, XXX Session.

for turning over the territory with the least disruption. In addition, the Commissioner was vested with the usual statutory executive and administrative powers.

In 1949, the UN set up the Relief and Works Agency for Palestine Refugees in the Near East. The Agency's regular programme for 19,330,000 people registered as refugees residing in Jordan, Lebanon and several other countries, includes food relief, services, as well as assistance in health care and education. The Agency is financed by voluntary contributions, and its activity is coordinated by the UN Commissioner-General.

In addition to these cases of appointing UN High Commissioners (Commissioners-General), the United Nations has also established the post of Commissioner on Technical Cooperation.

While acknowledging the importance and effectiveness of the work of UN Commissioners, it should be pointed out that their success is due, above all, to the clear-cut definition of their functions and the well-organized system of supervision on the part of the principal bodies of the United Nations. Furthermore, the range of problems to be tackled by the Commissioners does not cause much disagreement among the majority of member States, and most of the measures taken by them receive unanimous support.

On 16 December 1977 the General Assembly, after discussing the question of improving the effectiveness of international cooperation in the promotion of human rights, adopted resolution 32/130, which in effect defines the principles of UN activity in this field.

The effectiveness of UN activities in promoting human rights can be only raised if international cooperation in this area takes place in the context of détente, with strict observance of UN documents on human rights.

The most important question in this field today is the application of international agreements on human rights and freedoms within the territory of each country. At present, international law has developed an effective mechanism for monitoring the implementation of treaty obligations within national boundaries.

Through negotiations or by UN decision, the member States can set up an inquiry commission to investigate certain cases of persistent human rights abuses. A good example is an ad hoc commission to investigate human rights violations on Israeli-occupied Arab territories, which, despite Israel's refusal

to cooperate, has done much to expose flagrant violations of human rights on those territories, including violations of the Geneva Conventions for the Protection of War Victims (1949). The Human Rights Commission set up an ad hoc commission to conduct an inquiry into human rights violations by the Pinochet regime in Chile.

In accordance with the Convention on the Elimination of All Forms of Racial Discrimination, (1965), the United Nations has instituted a committee of 18 experts to examine reports by member States on legislative, judicial, administrative or other measures taken to implement the Convention's provisions. The committee submits an annual report to the Secretary-General. It can also make proposals and give recommendations. Moreover, there is a special procedure in case any member State considers that another member State is defaulting on its obligations under the Convention (Art. 11-12). Any member State is free to recognize the Committee's competence to receive and examine reports from individuals or groups claiming to be victims of human rights abuses by a certain state.

On the basis of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), in 1954 a European Commission of Human Rights and a European Court of Human Rights were set up. The authors of the Convention tried to base the activities of the Commission and the Court on the principle of supranationality.

The Commission performs the functions of an investigatory and advisory body. Whenever it fails to settle a dispute by peaceful means, it submits a report to the Committee of Ministers of the Council of Europe, expressing its opinion on violations of the Convention. The Committee of Ministers then decides whether the case should be turned over to the Court.

The members of the Court are elected by the Consultative Assembly for a term of nine years by a majority of the votes cast from a list of persons nominated by the members of the Council of Europe; each member nominates three candidates, of whom two at least should be its nationals (Art. 39, para. 1).

On 18 September 1959, the Council of Europe approved the statute of the Court and defined its rules and procedures. A special chamber, consisting of seven judges, is established for each case. One of the judges must be a national of one of the States parties to the dispute. The other judges are chosen by drawing lots.

A State can be summoned to the Court only if it has

recognized the Court's competence. A State may recognize the Court's competence in all cases or on an ad hoc basis. If the Court finds that the Conventions have been violated, it may demand compensation for the damage suffered by the victim. The Court's decisions are final, and the EEC Council of Ministers supervises their implementation.

Individuals and groups of persons, as well as States parties to international conventions, are entitled to lodge complaints with the Committee concerning violations of such conventions. Individuals and groups of individuals can do so only if the High Contracting Party against which the complaint has been lodged, has declared that it recognizes the competence of the Commission to receive such petitions. In such cases, the complaint can be lodged not only by a citizen of the offending State, but by a citizen of another State or an international organization.

Such an organization and the procedure of the Commission and the Court, in the opinion of the Convention's architects, serve to raise the level of responsibility for violations of human rights and freedoms. However, the practical experience of these international bodies suggests that the question of responsibility is far from settled and the results of their activity are in many cases contrary to those intended.

For example, the Commission received several complaints lodged by member States about human rights violations in other States.

In 1956-1957, the Commission received: two complaints from the government of Greece against the government of Great Britain concerning the situation in Cyprus—specifically, repressive measures against the island's population; a complaint by the Austrian government against Italy in connection with an incident between two customs officials; and a complaint by the government of Ireland against Great Britain concerning human rights violations in Northern Ireland.

In the West, the greatest importance is attached to complaints lodged with the Commission by private individuals. This is regarded by many as a new departure in international law and as recognition of individuals as subjects of international law.

The Commission does indeed receive a large number of complaints from private individuals. Most of these, however, are rejected by the Commission itself. In accordance with the Convention, the Commission can examine cases only after all the local means of human rights protection have been exhausted and only within six months after a final decision has been made.

It can also do so if the Commission has not yet examined these cases, or if these cases have not gone through an international procedure, and even if they have, but a new element appears in them. Complaints against States which are not parties to the Convention are not examined. The Commission also refuses to consider complaints demanding recognition of rights not provided for in the Convention (for example, the right to old-age and disability pensions).

Several States parties to the Convention—for example, Sweden, Belgium, West Germany, Denmark, Austria—agreed to having private individuals lodge complaints against them with the Commission. Some States agreed, but with reservations and for a limited period (Great Britain, for example, agreed to this for a period of three years and only in relation to the territory of Great Britain and Northern Ireland). A group of three Commission members examines each complaint separately. If for one reason or another a complaint is considered unacceptable, it is immediately forwarded to the government against which it has been lodged. However, the Commission also forwards complaints to the relevant governments when they are considered acceptable. Characteristically, up to now, the Commission has accepted less than one per cent of all the complaints. Of the 3,000 complaints sent by private individuals in 1966, for example, only 27 were accepted for examination.

In a number of cases, despite irrefutable evidence of flagrant human rights violations, the Commission adopted an inconsistent position and turned down complaints without good reason.

For example, the communist Party of Germany complained to the Commission that its disbandment by the Federal Court of West Germany was a violation of rights provided for by the Convention—above all, the freedom of association. The Commission turned down the complaint as groundless since the Convention provides for rights, the enjoyment of which must not infringe upon other rights guaranteed by the Convention, while the Communist Party of Germany was ostensibly violating this condition.

The Commission's reply was completely unsubstantiated, since the Communist Party of Germany has always struggled, as proclaimed in its programme, for the realization and observance of human rights and fundamental freedoms in the interests of the nation as a whole and the development of the individual.

A characteristic example of the Commission's policies was the discussion of human rights abuses under the Black Colonels

in Greece.[1] The Greek Junta did not succeed in misleading European public opinion or the UN Commission on Human Rights, despite all attempts to gloss over its reign of terror. To investigate the full extent of human rights violations in Greece, an ad hoc commission was set up, which went to Athens and heard evidence presented by both false witnesses hired by the Junta and people who gave objective information about the crimes perpetrated by the Black Colonels. The commission found that human rights and fundamental freedoms were consistently violated in Greece. In 1969, the Consultative Assembly of the Council of Europe discussed the situation in Greece. The rapporteur at the Assembly, Max Van der Stoel of Holland, pointed out that the Greek regime had done nothing to restore democracy in the country. He called on the Assembly to recommend that the Committee of Ministers of the European Council should suspend Greece from the Council pending the country's return to parliamentary democracy. In the course of the discussion, another 25 speakers presented their views. However, no concrete action was ever taken. The same thing happened when Great Britain was censured for human rights violations in Northern Ireland.

The British jurist, C.H.M. Waldock, expressed his opinion of the Commission's activity as follows: "If the proportion of positive and negative decisions was very much higher, you might ask yourselves what was happening to democracy in free Europe. The essence of our democracy is that the rights and freedoms of the individual are protected by our local laws and courts."[2]

At present, even the advocates of this mechanism of implementation of international conventions are demanding that their application in each member State be guaranteed under international law, and that this is where efforts to ensure protection of human rights should be concentrated.

This viewpoint conforms to the objective needs of the development of international law today. It is in harmony with the effective exercise of human rights and freedoms within the national boundaries of each member State. It raises the responsibility of each government to honour its international commitments in this field.

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[1] *The Greek Case*, Report of European Commission of Human Rights and Resolution of the Committee of 15 April 1970, The Hague, 1977.

[2] C.H.M. Waldock, "The European Convention for the Protection of Human Rights and Fundamental Freedoms", *The British Yearbook of International Law, 1958*, Oxford University Press, London, 1959, p. 361.

The Covenants on Human Rights provide for a different mechanism.

The States which have ratified the International Covenant on Economic, Social and Cultural Rights undertake to submit to the Economic and Social Council periodic reports on measures being taken and on progress achieved in ensuring the rights recognized in the Covenant. Upon examining these reports the Council, in cooperation with other UN organs and subsidiary bodies, can promote the elaboration of appropriate international measures which could assist member States in the relevant fields.

States which have ratified the International Covenant on Civil and Political Rights elect a Human Rights Committee consisting of eighteen members. It examines reports submitted by the States parties to the Covenant and conveys to them, and also to the ECOSOC, its general opinion. In the course of discussion, the Western States tried to include the International Court of Justice as a body which could give advisory opinions on cases being examined by the Committee. However, this proposal was voted down by the majority of member States, including the socialist countries, who considered that the International Court of Justice could not replace the parties to a treaty in its interpretation.

The representatives of the United States and several other capitalist countries tried to include in the International Covenant on Civil and Political Rights an obligatory system of examining complaints from private individuals and complaints lodged by one State against another. This proposal was also voted down.

As a compromise, an Optional Protocol was worked out in accordance with which any member State is free to agree to this obligatory system of examining complaints from private individuals. However, this would apply only to those countries which have adopted it. Attempts were made by several Western countries, including the United States, Italy, Canada, Holland, and Israel, to institute a supranational body in the form of an expert committee which would supervize the Covenant's implementation by each member State, but that proposal was also voted down.

The unanimous approval of the International Covenants on Human Rights by the Twentieth General Assembly signalled the victory of the principles of sovereignty of States and non-interference in their domestic affairs under the pretext of human rights protection. Underlying these Covenants is the

principle of responsibility of States and governments for observance of human rights and freedoms on their territories. Article 2 of the Covenant on Civil and Political Rights declares that each State party to the Covenant undertakes to take the necessary steps to implement its provisions within its territory. As stated in Art. 2, "each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction, the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Where not already provided for by existing legislative or other measures, each State party to the present Covenant undertakes to take the necessary steps," in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant. The Covenants impose on the States parties to the obligation to uphold human rights and to take all necessary measures to ensure to their citizens the social, economic, and political rights recognized in the Covenant.

Having examined the current systems of international human rights protection, we can formulate the most general principles underlying them. They are: the principle of respect for the self-determination of peoples; the principle of non-interference in the domestic affairs of States; the principle of non-discrimination; the principle of providing the most favourable conditions for the individual; the principle of the binding nature of human rights and fundamental freedoms on all participating States; and the principle of reliability of human rights and fundamental freedoms.

It is obvious, therefore, that under international law, the protection of human rights is within the jurisdiction of each State and no international body is entitled to interfere in its domestic affairs for the purpose of examining matters within that State's internal jurisdiction without its consent, unless the situation threatens international peace and security or unless the human rights violations within its territory are of a systematic and flagrant nature. At the same time, the mechanism of international protection of human rights is of extraordinary importance not only because it constitutes an admirable form of international cooperation, but also because it exerts a powerful influence on the legislative process, on the development of

international relations in the field of human rights and freedoms, the protection of individual rights, and provides the opportunity in cases of flagrant and persistent violations of human rights and freedoms on a mass scale, to take effective international measures for upholding human rights.

Chapter III

Armed Conflict and International Humanitarian Law

§ 1. The Concept of Armed Conflict

An international armed conflict is a military confrontation between subjects of international law, which include, from the viewpoint of international practice and contemporary international law, States fighting for national independence and nations and international organizations committing acts of aggression, breaching the peace, or threatening international peace. The obligation to apply the principles and standards of international law arises with the outbreak of an armed conflict and continues until the legal formalization of the state of war or until the termination of the armed conflict. The concept of armed conflict includes all types of military operations in any form.

Whereas in relation to the first group of subjects there is complete agreement in both theory and practice, in relation to the second and third groups opinions differ. However, existing objections against their status as subjects of international law in the context of the mandatory nature of the Geneva Conventions of 1949 and Protocols Additional to the Conventions in any armed conflict are negligible. It should be specially emphasized that every people and nation has a legitimate right to wage armed struggle for self-determination in case of necessity. A resolution of the Twenty-Third General Assembly reaffirmed the legitimacy of armed struggle waged by colonial peoples in the exercise of their right to self-determination and independence. The Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) adopted by the Fifteenth General Assembly, explicitly bans military operations and repressive measures of any kind against dependent peoples. Such actions must be banned in order to give these peoples the opportunity to exercise their right to complete independence in peace and freedom.

The Declaration on Principles of International Law Con-

cerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, adopted by the Twenty-Fifth General Assembly, not only bans the application of any forcible action against peoples fighting for national liberation. It emphasizes that "in their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter".

Proceeding from this Declaration, the General Assembly declared the colonial wars being waged at the time by Portugal against the peoples of Angola, Mozambique, and Guinea-Bissau to be unlawful and criminal. The 23rd and 24th General Assemblies called on Portugal and South Africa to ensure the application of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (12 August 1949) to the resistance fighters and civilian population of the territories under Portuguese domination and in South African-occupied Namibia.

The Protocol of 10 June 1977 Additional to the Geneva Conventions Relative to the Treatment of Prisoners of War (1949), also classes as international conflicts, armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination. This means not just another recognition of the legitimacy of the national-liberation movement, but also the duty to assist it in every possible way, including armed assistance, to help dependent peoples exercise their right to self-determination.

An international organization which, under the UN Charter, can use its armed forces to stop or prevent aggression and to maintain peace and international security, can also become a party to an international armed conflict. Typical examples include the recent events in the Middle East and in Cyprus.

Thus, it would be wrong to say that an international armed conflict occurs only when two States clash. Therefore, it is incorrect to interpret "The High Contracting Parties" as only "States", as was done in the Geneva Conventions. These "High Contracting Parties" can include other subjects of international law as well. The National Liberation Front of Algeria, for example, acceded to the Geneva Conventions on behalf of its struggling people before the independence of Algeria, as did the Palestine Liberation Organization.

The mere recognition by other countries of an entity as being a party to an international armed conflict cannot be considered an objective criterion. Therefore, in an armed conflict, relevant international agreements must be applied by all regardless of recognition or non-recognition by other countries of a certain belligerent as a subject of international law.

An organized resistance movement or international organization, as practice has shown, is capable of acceding to international agreements. They can give rise to rights and obligations in international relations and can bear responsibility for defaulting on their obligations.

Some jurists believe that there is no need to specially single out international conflicts since any internal conflict can escalate into an international one as a result of military intervention. However, such an approach ignores the specific character of international relations. It can develop only within the framework and on the basis of contemporary international law, which bans interference in the domestic affairs of any State under any pretext whatsoever, to say nothing of military intervention.

On the other hand, in an internal armed conflict the first problem that arises is that of application of human rights and fundamental freedoms, constitutional provisions, domestic legislation and special principles of international law which have become national law as a result of that particular State's accession to an international agreement.

For this reason, international humanitarian law should be applied in any armed conflict and essentially aims at preventing armed conflicts and protecting the victims of such conflicts.

The International Red Cross and Red Crescent attaches great importance to the principles and norms of international humanitarian law, regarding them as powerful instruments of their national societies in protecting and assisting the victims of armed conflicts. The entire history of international humanitarian law is closely linked with this movement. It can be said that virtually all international agreements and treaties relating in any way to the protection of human rights in armed conflicts and their humanization have been the result of wide-ranging initiatives of the International Committee of the Red Cross, the League of Red Cross Societies, and National Red Cross Societies. International legal norms establishing certain humane rules of warfare have done a great deal to reduce as much as possible the calamities, devastation, and the number of casualties caused by armed conflicts. Military history reveals that these

humanitarian laws benefit above all the working people, who always have to bear the brunt of war.

In a statement in 1953, the Soviet Government pointed out the importance of the Geneva Protocol on Gas and Bacteriological Warfare (1925) during World War II: "If it had not been for this Protocol ... obviously there would have been no restraining factor in the use of chemical and bacteriological weapons in the Second World War. The fact that throughout that war no government dared use chemical or bacteriological weapons, was of tremendous importance. On the other hand, we cannot belittle the fact that, basing themselves on this international agreement, the members of the anti-Hitlerite coalition firmly declared that if ever the enemy attempted to use such weapons in the war, it would be dealt a crushing retaliatory strike."[1]

The chairman of the Geneva Diplomatic Conference of 1949, which drafted the Convention on the Protection of the Victims of War, said at the opening ceremony that he often heard remarks to the effect that the Geneva Convention had failed to prevent the brutalities committed during the war and that, therefore, there was little use in drafting a new convention which would not be respected anyway. He stated he could not agree with such a pessimistic attitude because, although the 1929 Convention had been violated on more than one occasion, in many other cases it had been observed, with the result that thousands of lives were saved. The idea of more humane methods of warfare should not be dismissed just because an existing treaty had not been observed as fully as desired, he concluded.

Armed conflicts which occurred after World War II have shown once again that standards of international law establishing humane rules of warfare actually do help to save the lives of many soldiers, protect the civilian population, and alleviate the suffering of the sick and wounded. This has been of special importance in the struggle of colonial peoples for national liberation.

However, the role of these legal standards is not limited to reducing the calamities and casualties of armed conflicts. By banning reprisals against the wounded, the sick, prisoners of war and civilians of the hostile country, these international legal standards expose the aggressor's crimes. They can, consequently, be used in condemning aggression. However, all

[1] *Pravda*, 22 December 1953.

this can be really effective only if these standards are regularly updated in line with the development of new weapons, military technology, and methods of warfare.

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With international relations today entering a new stage of development, an increasingly urgent issue is the application of international law inside the countries taking part in international intercourse. The issue is, of course, equally relevant in international armed conflicts.

It should be noted that the majority of armed conflicts which occur today are not international. They are either local or regional conflicts between States, or conflicts which started out as internal conflicts but later assumed international proportions as a result of intervention by third countries.

Bearing in mind the possibility of noninternational armed conflicts and seeking to alleviate the consequences of such conflicts, in 1949 the international community formulated Art. 3 of the Geneva Conventions of 12 August 1949, which provides an essential minimum of rules to be observed by the parties to such conflicts. At the same time, the article states that the parties to a conflict must try to implement, through special agreements, all or at least part of the other provisions of the Geneva Conventions.

In 1968, the Teheran Conference on Human Rights adopted a resolution bringing to the notice of the UN Secretary-General the need to undertake additional research, implying that the Geneva Conventions of the Red Cross of 12 August 1949 were too narrow in scope and did not cover all types of armed conflict. The General Assembly stated in Resolution 2444 of 1968 that a distinction must be made at all times between persons taking part in the hostilities and the civilian population to the effect that the latter be spared as much as possible.

The General Assembly requested the Secretary-General together with the International Committee of the Red Cross and other relevant international organizations to study the need for additional humanitarian international conventions or for other appropriate legal instruments to ensure the better protection of civilians, prisoners, and combatants in all armed conflicts and the prohibition and limitation of the use of certain methods and means of warfare.

As early as 1969, at the 21st Conference of the International

Red Cross, the ICRC presented a report entitled "Protection of Victims of Non-International Conflicts". The Report points out that under Article 3 of the Geneva Conventions, the legally constituted government retains certain powers, but that the same article contains provisions which rule out purely arbitrary government decisions. In accordance with international law, compliance with Article 3 is binding not only on the government, but also on the residents of the State in question and, therefore, application of these provisions is obligatory for both the insurgents and the authorities, who came into existence after the State ratified or acceded to the Convention.

Article 3 of the Geneva Conventions also has certain drawbacks, which seriously affect the protection of victims of non-international armed conflicts. For example, there is no mention of the immunity which should be enjoyed by the sign of the Red Cross, military and civilian medical personnel, and national societies of the Red Cross. This, naturally, hampers the work of the Red Cross groups in aiding the wounded and sick personnel of the hostile country for fear of becoming defenceless victims of military operations or for fear of being later accused of assisting the enemy. The ICRC's report pointed out that the parties to a non-international armed conflict must observe the regime specified in Article 23 of the Geneva Convention Relative to the Protection of Civilians: free passage of all consignments of medical and hospital supplies intended exclusively for the civilian population; free passage of all parcels containing food, clothing and restoratives for children under the age of 15, pregnant women and women in childbirth. Persons detained during an internal armed conflict must be given the opportunity to correspond with their families and must be rendered all necessary assistance.

From the very outset of the discussions, attempts were made to link the issue of internal armed conflicts with the question of assistance to victims of internal tensions and riots. However, in the course of discussions at conferences of experts of national Red Cross societies and conferences of governmental experts in 1971 and 1972, the overwhelming majority of speakers correctly pointed out that internal tensions and riots fell within the exclusive jurisdiction of the State concerned and were in no way related to Article 3 of the Geneva Conventions, which deals with internal armed conflicts.

An important aspect of the above problem is a definition of a non-international armed conflict which would make it possible to determine the presence of such a conflict and prevent other

countries from taking undue advantage of it. The outbreak of a non-international armed conflict, especially a protracted one, can, in a number of cases, present a threat to international peace and security.

Despite attempts by certain Western countries to include in international conventions an interpretation of the national liberation struggle against colonial domination as an internal armed conflict, such concepts cannot be considered legally substantiated. The United Nations calls for the immediate abolition of all forms of colonial domination and for the recognition of the colonial peoples' rights to free self-determination. The principle of dismantling the colonial system has become a universally recognized principle of international law.

Therefore, it was important to limit the interpretation of an internal armed conflict to a situation defined as a civil war.

The working group set up at the conference of government experts in May-June 1971 suggested a definition which could become the basis of further discussion. According to this definition, an internal armed conflict takes place in cases where: (1) organized armed forces conduct military operations against the authorities and the latter use their own armed forces against such insurgents; and (2) organized armed forces conduct military operations against other organized armed forces regardless of whether the authorities use their own armed forces to restore the peace. Several experts suggested adding to this definition such criteria as (a) occupation of part of a country's territory by armed forces conducting military operations against the authorities; and (b) observance by such armed forces of military discipline, with military operations reaching a level at which the application of the Protocol would be determined by humanitarian necessity.

On the basis of discussions conducted at the First Conference of Government Experts on International Humanitarian Law in May 1971, the International Committee of the Red Cross drafted a Protocol Additional to Article 3 of the Geneva Conventions of 1949 specifically devoted to non-international armed conflicts. The ICRC's draft protocol provides a somewhat different definition of a non-international armed conflict: "this Protocol ... shall apply to all armed conflicts ... which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible commands, exercize such control..."

This definition undoubtedly covers the situation of civil war, yet the definition formulated by the working group reflected this situation more exhaustively.

At the Second Conference of Government Experts in May 1972, three groups of opinions were expressed concerning the above definition. One group of experts suggested introducing into the definition a so-called subjective criterion, according to which a non-international armed conflict should be recognized as having occurred only if the State on whose territory it takes place itself acknowledges it. Such an approach is wide open to criticism, since any armed conflict is an objective fact. An armed conflict always results in casualties, and, therefore, irrespective of the will of any government, there arises the problem of protection of human rights. Quite another matter is the degree of intensity of the conflict and whether the norms of international law should be applied to it or national legislation would be sufficient.

Another group of experts was against giving any kind of definition to a non-international armed conflict on the grounds that it would be very difficult to formulate a precise definition. However, the absence of a definition could open the door to abuses and hamper effective assistance to the victims of non-international armed conflict.

Finally, the third group of experts suggested amending the definition provided for in Art. 1 of the ICRC's draft protocol with additional provisions which would specify the conditions under which an armed conflict should be considered a non-international one, the parties to which are obliged to observe the international legal rules set forth in Article 3 of the Geneva Conventions and in the Additional Protocol. A working group set up at the conference of government experts headed by Prof. R. Baxter, tried to find areas of agreement between them by suggesting six definitions of a non-international armed conflict.[1] The first five definitions constituted an attempt to reflect the objective elements of the situation caused by a non-international armed conflict, such as the organized nature of the parties to the conflict, the intensity and duration of the conflict, the engagement of the parties' armed forces, etc. The sixth version reflected the minority opinion, according to which the State on whose territory a conflict breaks out must itself

[1] See: *Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. Report by Commission II. Rapporteur B. Y. de Brucker*, Geneva, 3 May-3 June 1972, pp. 99-100.

determine the need for applying the Protocol. Some of the experts suggested combining the objective criteria with the subjective role of the State concerned in order, as they put it, to observe the principle of sovereignty. However, the principle of sovereignty is already observed when the State concerned signs an international treaty, thus voluntarily assuming certain obligations provided in it.

What then are the key principles that should be borne in mind in the drafting and application of a protocol additional to Article 3 of the Geneva Conventions on non-international armed conflicts?

Such a protocol must embody and guarantee strict observance of the principle of non-intervention in the domestic affairs of a State, on the part of any other State under any pretext whatsoever.

There is a body of opinion which tries to justify a so-called humanitarian intervention in the domestic affairs of a State, that is to say, the rendering of humanitarian aid up to and including military intervention for the purpose of, for example, protecting the citizens of the invading nation. This approach is in flagrant violation of the basic principles of international law, primarily of Para. 4 of Article 2 of the UN Charter.

Humanitarian aid to victims of internal armed conflicts, above all to civilians, the wounded, the sick, and the shipwrecked can be rendered only on the principle of non-intervention. Such aid should not be regarded as intervention in domestic affairs, but neither should it under any pretext violate the principle of non-intervention in the domestic affairs of States. Organizations authorized to render such aid include, above all, national Red Cross societies acting in accordance with local legislation and their own instructions, the International Committee of the Red Cross, and the League of Red Cross Societies. The operation of the latter two organizations on the territory of a State in which an internal armed conflict is in progress, is conditional on the consent of the parties to the conflict.

Bearing in mind the situation which usually accompanies non-international armed conflicts, special attention should be devoted to the role, rights and obligations of the national Red Cross society of the State concerned.

Of paramount importance is the principle of respect for human rights and freedoms. At present, this principle is already well-established in international law. This implies the duty of States to set up democratic regimes within their territories

pursuant to international treaties and agreements on human rights and freedoms.

The principles of international protection of human rights, as formulated in relevant international agreements, must also be taken into account in conditions of non-international armed conflict.

This approach proceeds from General Assembly resolution 2675 (XXV) entitled "Basic Principles for the Protection of Civilian Populations in Armed Conflicts", which stipulates, in part, that "fundamental human rights, as accepted in international law and laid down in international instruments, continue to apply fully in situations of armed conflict".[1]

The principle of full protection of the civilian population in armed conflicts must be scrupulously observed. A civilian is any person not forming part of the armed forces and not directly involved in military operations.

Neither the civilian population as a whole nor any individual civilian in particular must ever be subjected to armed attack. Even the presence of individual combatants among the civilian population can deprive the latter of their immunity. General Assembly Resolution 2444 emphasizes as one of the key principles that should be borne in mind in drafting any amendment to the Geneva Conventions of 1949, the ban on any armed attack on the civilian population as such. This also applies to the requirement to always draw a distinction "between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible".

Another important principle that was taken into account is the humane treatment of combatants, i. e., direct participants in an armed conflict. A resolution of the Twenty-Sixth General Assembly emphasizes the need for "development of the rules concerning the status, protection, and humane treatment of combatants" in international and non-international armed conflict.

Obviously, in non-international armed conflicts combatants should be subject to the same regime as envisaged for prisoners of war.

At the Second Conference of Government Experts on International Humanitarian Law, Prof. Riphagen of Holland suggested that this regime should be applied to members of both

[1] See: Report of the Secretary-General: "Respect of Human Rights in Armed Conflicts", UN Doc. A/8370, Twenty-Sixth Session, 2 September 1971. p. 8.

regular and non-regular armed forces, provided that they conduct military operations in conformity with the laws and customs of war and the regulations laid down in the relevant Protocol; if in conducting military operations they differ from the civilian population in that they openly carry weapons, have insignia, or in any other way, and if they are organized and headed by a person responsible for his subordinates.

This approach should be combined with the application of national legislation which requires certain forms of conduct of its own citizens and aliens within its territory.

Finally, one should bear in mind the principle of prohibition of, and responsibility for, military crimes and crimes against humanity as stated in the Charter of the Nürnberg Tribunal, whose provisions have been confirmed by General Assembly resolutions 3 (I) and 95 (I) as principles of universal international law.

The Diplomatic Conference on International Humanitarian Law held at Geneva in 1974-1977, adopted the Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts, which was drafted by the ICRC on the basis of discussions held by government experts.

After a long debate, the sphere of application of the Protocol was defined. In accordance with the agreement achieved, "this Protocol ... shall apply to all armed conflicts ... which take place in the territory of the High Contracting Party between its armed forces and dissident armed forces or under organized armed groups which, under responsible command, exercize such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol".

Quite obviously, the Protocol does not apply to situations of internal disturbances and tensions.

The Protocol's provisions aimed at protecting the victims of non-international armed conflicts apply, without any adverse distinctions, to all persons affected by such armed conflicts. All persons who have been deprived of their liberty or whose liberty has been restricted for reasons related to such conflicts, enjoy the protection of the Protocol until the end of such deprivation or restriction of liberty.

The application of the Protocol should in no way affect the status of the parties to the conflict. An important principle is that nothing in the Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of

the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

The agreement specifies that nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurred. An important principle of the Protocol is the equality of rights and responsibilities of the parties to the conflict in protecting the victims of a non-international armed conflict.

Bearing in mind the complexity of situations arising from armed conflicts, of special importance is the understanding that persons not taking part in hostilities shall be entitled to respect for their person honour and convictions and religious practices. The following acts against all persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are and shall remain prohibited at any time and in any place whatsoever: violence to the life, health, and physical or mental well-being of persons, in particular murder as well as cruel treatment (torture, taking of hostages, acts of terrorism); outrages against personal dignity (humiliating and degrading treatment, enforced prostitution and any form of indecent assault, slavery and the slave trade); pillage; and likewise threats to commit any of the foregoing acts.

The Protocol specially emphasizes the need to protect women and children. As regards persons whose liberty has been restricted in connection with the armed conflict, special protection is extended to the wounded and sick. To the same extent as the local civilian population, they shall be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and dangers of the armed conflict. They shall also be allowed to receive individual or collective relief, and to practice their religion. Moreover, they shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population. Women shall be held in quarters separated from those of men. They shall all be allowed to send and receive letters and cards, the number of which may be limited. The places of detention or internment should be sufficiently far removed from the zone of military operations.

The belligerents must allow representatives of impartial

humanitarian organizations, above all the Red Cross societies, to visit such persons.

The Protocol devotes much attention to the protection, medical aid and care of the wounded and sick.

The physical or mental health and integrity of persons who have been interned, detained or whose liberty has been otherwise restricted, shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described to any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with the generally accepted medical standards applied to free persons under similar medical circumstances. It is prohibited to subject such persons, even with their consent, to mutilation, medical or scientific experiments, or removal of tissues or organs for transplantation. There has been no disagreement on the need to search for and collect the wounded, sick and shipwrecked, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead, to prevent their being despoiled, and decently dispose of them. All necessary measures should also be taken, whenever possible, to evacuate the wounded, sick, children and old people from a besieged or surrounded area.

Special attention is devoted to the civilian population's role in protecting and assisting the wounded, sick and shipwrecked regardless of which party to the conflict they belong to, or whether or not they have directly taken part in the armed conflict. In all cases, the local civilian population must show respect for such persons and refrain from acts of violence in relation to them.

The civilian population and relief societies located in the territory of the High Contracting Party, such as Red Cross organizations, may, even on their own initiative, offer to collect and care for the wounded, sick and shipwrecked. No one may be prosecuted, convicted or punished for rendering such assistance.

For their part, the parties to the conflict may appeal to the civilian population and to these societies for assistance to the wounded, sick and shipwrecked, for help in collecting the dead, and for provision of protection and conditions required by those who respond to such appeals. If the hostile party establishes or reestablishes control over a given area, it must provide similar protection and conditions for as long as necessary.

For the first time in conditions of non-international armed conflict, the Protocol provides for protection of and respect

for medical and religious personnel. Such personnel shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission.

In the performance of their duties, medical personnel may not be required to give priority to any person except on medical grounds.

Persons carrying out medical duties are subject to protection. An agreement has been reached that under no circumstances shall any person be punished for having carried out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.

Persons engaged in medical activities shall neither be compelled to perform acts or to carry out work contrary to, nor be compelled to refrain from acts required by, the rules of medical ethics or other rules designed for the benefit of the wounded and sick.

The professional obligations of persons engaged in medical activities regarding information which they may require about the wounded and sick under their care shall, subject to national law, be respected.

Subject to national law, no person engaged in medical activities may be penalized in any way for refusing or failing to give information concerning the wounded and sick who are, or who have been, under his care.

For the first time in conditions of armed conflict, the Protocol gives statutory force to the protection of medical units and transports.

The Protocol states that medical units and transports shall not be the object of attack. The protection to which medical units and transports are entitled shall not cease unless they are used to commit hostile acts, outside their humanitarian functions. Protection may, however, cease only after a warning has been given setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.

According to the Protocol, the following shall not be considered as acts harmful to the enemy: (a) that the personnel of the unit are equipped with light individual weapons for their own defence or for that of the wounded and sick in their charge; (b) that the unit is guarded by a picket or by sentries or by an escort; (c) that small-arms and ammunition taken from the wounded and sick, and not yet handed to the proper service, are found in the units; (d) that members of the armed forces or other combatants are in the unit for medical reasons.

The Protocol stipulates the need for medical personnel, units and transports to be marked by a distinctive emblem which shall be respected in all circumstances. The parties to the conflict may agree on the use of distinctive signals for identification of medical units and transports.

Any misuse of the distinctive emblem and signals shall be prohibited. They shall not be used as a means of protection for any other persons or objects. Each of the parties shall take measures to supervise the use of the distinctive emblem and signals.

As already noted, the provisions of the Protocol designed to protect the civilian population are regarded as a significant achievement alleviating the disastrous impact of internal armed conflicts, since it is the civilian population, although it does not take a direct part in hostilities, that always suffers the most from them.

With this in view, the Protocol stipulates the obligation always to draw a distinction between the civilian population and the combatants, and between civilian objects and military objectives.

The civilian population shall enjoy international legal protection and shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

However, civilians shall only enjoy protection unless and until they take a direct part in hostilities.

The employment of methods or means of warfare which have an indiscriminate effect in relation to civilians and combatants and in relation to civilian objects and military objectives, shall be prohibited.

Indiscriminate attacks are attacks by bombardment by any means which treat as a single military objective, a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects. The parties to the conflict shall not direct the movement of the civilian population or individual civilians for the purpose of attempting to shield military objectives from attacks or to shield military operations.

The Protocol was the first to prohibit attacks on civilian objects. Attacks on civilian objects shall be deemed possible only in cases where by their nature, location, purpose or use, such objects make an effective contribution to the military operations of the parties to the conflict.

Works or installations containing dangerous forces, namely dams, dykes, and nuclear power generation stations, shall not be made the object of attack, even where these objects are military objectives, if such attacks may cause the release of dangerous forces from the works or installations and consequent severe losses among the civilian population.

For their part, the parties to the conflict shall endeavour to avoid locating any military objectives in the vicinity of such works or installations. Protection of these works and installations shall be regarded as standard procedure in the parties' military operations.

Of tremendous importance is the Protocol's provision that care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage.

Taking into consideration the practice of forcible displacement of the civilian population in many civil wars, the Protocol prohibits such displacement in all cases provided for by law. However, in cases where the security of the civilians or imperative military reasons necessitate such displacement, the party to the conflict shall take all possible measures in order that the civilian population may be provided for under satisfactory conditions of shelter, hygiene, health, safety and nutrition.[1]

Thus, Protocol II is the first attempt ever made in international legal practice, to bring down to a minimum the calamities resulting from internal armed conflicts and to provide maximum protection for the civilian population and all victims of such conflicts.

Persons belonging to either party to the conflict violating the Protocol incur legal responsibility.

Establishment of legal restrictions on the atrocities that accompany internal armed conflicts and rendering of assistance to their victims is a complex and difficult process. However, all those who want to see the triumph of democracy, justice and humanism, should spare no effort to promote this process in the interests of progressive social development of all nations and mankind as a whole.

[1] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Geneva, 1977.

§ 2. International Legal Criteria of the Prohibition or Restriction of the Use of Conventional Weapons

The extensive discussion of the problem of banning or restricting the use of conventional weapons at various international forums[1] has shown that existing prohibitive and restrictive provisions, in the main, reflect the interests of the international community and mankind as a whole, rather than the interests of the belligerents. Such an approach is generally characteristic of international humanitarian law applicable to armed conflicts and restricting the belligerents' actions for the sake of protecting life.

Contemporary international law lays down both general and specific principles of prohibition or restriction of the use of conventional weapons. All these principles are established as obligatory in any armed conflict. One should first of all recall Article 22 of the Hague Conventions, which states: "The right of belligerents to adopt means of injuring the enemy is not unlimited." This provision was borrowed from the Brussels Declaration of 1874 (Art. 12), and was therefore an important principle of international conduct in conditions of armed conflict back in the 19th century, requiring that the belligerents take into account the consequences of the use of every type of weapons.

Article 23 of the Hague Conventions embodies another general principle, which prohibits the use of poisons or poisoned weapons, to kill or treacherously wound individuals belonging to the hostile nation or army, and to use weapons, artillery shells, or substances capable of causing unnecessary suffering.

Another general principle was laid down in General Assembly Resolution 2444 (XXIII), adopted unanimously on 18 December 1968, which requires the belligerents to draw a distinction, at all times, between persons taking a direct part in the hostilities and persons belonging to the civilian population, in order to protect the latter as much as possible against the atrocities of war.

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[1] International Conference on Human Rights (Res. XXIII); Resolution 2444 (XXIII) of the Twenty-Third Session of the UN General Assembly; 21st International Conference of the Red Cross; 22nd International Conference of the Red Cross (Res. XIV); Conference of Government Experts on the Use of Weapons That May Cause Unnecessary Suffering or Have Indiscriminate Effects (Lucerne, 1974; Lugano, 1976); Diplomatic Conference on International Humanitarian Law (1974-1977).

On the basis of these general principles, international humanitarian law developed a number of specific principles of prohibiting or restricting the use of conventional weapons. It was important that all these principles, both general and specific, should be subject to uniform interpretation and application, especially when in 1968 the question arose of amending and developing a number of standards of international humanitarian law.

The specific principles include: (1) the principle of prohibiting or restricting the use of conventional weapons if such use causes unnecessary suffering; (2) if such use is of a treacherous nature; and (3) if such use is indiscriminate.

In the course of discussion of this issue at international forums, the following basic trends emerged.

At the Diplomatic Conference on International Humanitarian Law (1974-1977), a number of States, including Sweden, Switzerland, Mexico and Cyprus, expressed the view that the issue of banning the use of certain types of weapons should be dealt with immediately, at that same Conference. They suggested that a special protocol additional to the Geneva Conventions of 1949 should be adopted or that special provisions banning the use of specific types of conventional weapons, should be included in the existing protocol on international armed conflicts. Other countries, including the socialist States, declared that the issue required careful examination in order to find a solution satisfactory to the greatest possible number of States. Moreover, they said, the existing Protocols to the Geneva Conventions of 1949 on the Protection of Victims of War, should not be encumbered with this problem, since apart from the humanitarian aspect it also concerns the security of States and self-defence and, therefore, requires separate examination. At the Diplomatic Conference on International Humanitarian Law[1] this approach was supported by the majority of participants, and it was decided to convene a conference of experts consisting of jurists, physicians, and military specialists.[2]

On the initiative of the International Committee of the Red Cross, in September 1974 Lucerne hosted a conference of government experts, which examined these issues.[3] It was in

[1] See: A/CONF. 35/PREP. CONF/CRP. 2, CRP. 3, CRP. 4, 3 August 1978.

[2] *Conference of Government Experts on the Use of Weapons That May Cause Unnecessary Suffering or Have Indiscriminate Effects. Report of the Work of Experts*, Geneva, 1973, 1974.

[3] *Conference of Government Experts on the Use of Certain Conventional Weapons, Lucerne, September 1974*, Doc. t. Geneva, 1975.

effect the first attempt in history to address the problem in such a comprehensive manner. The final communiqué testifies to the success of the Conference. But in view of the previous experience of the consideration of such matters by international conferences, one should not be overoptimistic that as a result of the initial examination of the issue of banning the use of certain types of conventional weapons, their use will actually be banned or restricted.

The conference at Lucerne brought to light the substantial differences of opinion on these issues.

The divergent points of view demonstrated that the experts were not yet able to work out a common policy for the prohibition or restriction of the use of certain types of conventional weapons. More time was needed to study the issues involved, especially since the issue was considered in somewhat abstract terms and in isolation from other problems of international relations, specifically international security and disarmament. It was decided, therefore, to convene another conference of government experts shortly.

In February 1974, at the Diplomatic Conference on International Humanitarian Law (Geneva), Sweden, Egypt, Yugoslavia, Mexico and Norway submitted a proposal[1] banning the use of incendiary weapons, above all napalm, fragmentation weapons, specifically pellet bombs, needle weapons, and also high-velocity and dumdum bullets.[2]

The Second Session of the Diplomatic Conference on International Humanitarian Law (1975) examined a revised document, whose drafters, later joined by Sudan, Algeria, Lebanon and Mauritania, attempted to formulate certain specific principles of the prohibition or restriction of the use of particular types of conventional weapons. However, the authors of the document could not agree on whether a convention outlawing the use of certain types of weapons should ban these weapons as such or only certain methods of their use. For instance, in the section on incendiary weapons, the authors of the document suggested, on the one hand, that incendiary bombs, mines, and grenades be banned altogether, while on the other hand, permitting their use against aircraft and armoured vehicles.

In explaining their position on incendiary weapons, the authors of the draft invoked the general rules restricting the

[1] Doc. CDDH (DT), 12 February 1974.

[2] M. Lamsden, "New Military Technology and the Erosion of International Law: the Case of the Dumdum Bullets Today", in: *Instant Research on Peace and Violence*, No. 1, 1974.

right of the parties to the conflict and their armed forces to employ certain methods and means of warfare, and also rules prohibiting the use of arms, projectiles, materials, methods and means calculated to cause unnecessary suffering to individuals belonging to the hostile nation or army who have already been put out of action or to make their death inevitable in all circumstances (Arts. 22 and 23 of the Hague Conventions of 1899 /II/ and 1907 /IV/, Respecting the Laws and Customs of War on Land; Preamble to the St. Petersburg Declaration of 1868).

Contemporary international law does restrict the right of belligerents in the choice of certain types of weapons and methods of warfare (for instance, the use of chemical and bacteriological weapons is unconditionally prohibited). However, nowadays "unnecessary suffering" can hardly be considered a realistic and objective criterion—not only because it can be applied to all types of weapons depending on the methods of their employment, but also since the very concept of "unnecessary suffering" is much too vague. Indeed, from the medical point of view it is very hard to determine the borderline between "necessary" and "unnecessary" suffering which would restrict the use of incendiary weapons. In fact, the very use of the term "unnecessary suffering" suggests that the belligerents otherwise may have the right to inflict "necessary" suffering.

The prohibition of incendiary weapons as such is intrinsically wrong, because there are dozens of types of such weapons that cause no suffering as such. For this reason, several authors of the draft document tried to single out weapons having so-called incidental incendiary side effects (for example, illuminating projectiles, tracers, smoke screens, or signal systems), which are intended as protection against aircraft or armoured vehicles. However, in such cases "unnecessary suffering", as interpreted by the draft's authors, is meted out above all to the crew members.

Quite obviously, an overall ban on the use of fragmentation weapons, which in fact are employed virtually by all armies, would also be very hard to enforce. On the other hand, such types of fragmentation weapons as pellet bombs, needle mines, cluster warheads, and so-called undetectable plastic fragments, constitute some of the most barbaric inventions and must certainly be banned. Nevertheless, such weapons were used in Indochina against the civilian population.

One of the proposals submitted at the Diplomatic Conference

on International Humanitarian Law in 1975 concerned the prohibition of high-velocity small-calibre projectiles, and also certain types of rifle and submachine-gun bullets. At present, international law has only the Hague Declaration of 1899, that bans the use of dumdum bullets, which easily expand or flatten on impact with the human body.[1] It can be suggested that the effect of high-velocity bullets is similar, but military and medical experts[2] disagree sharply on the actual amount of suffering they inflict. Such disagreement naturally makes it very hard to define objective criteria for banning the use of such bullets.

The Conference of Government Experts in Lucerne and the Diplomatic Conference on International Humanitarian Law of 1975 devoted much attention to time bombs and anti-personnel mines. Some experts suggested that several types of such weapons are of a treacherous nature and should be covered by the general ban under the Hague Convention of 1907.

For example, booby-mines (in the form of pens, toys, radio sets, etc.) are highly barbaric weapons intrinsically directed against civilians. The indiscriminate dropping of mines from the air as an offensive operation also cannot be justified, since it creates a real threat to the civilian population not only during the armed conflict, but after it as well, unless such mines are equipped with safety detonators or unless mine fields are cleared or handed over to the civilian authorities after they cease to serve the purpose of defence.

In our day and age, it is hard to ban the use of any type of conventional weapons as a whole, without any provisos. At the same time, today it is already possible to begin working out an agreement prohibiting a certain method or methods of employment of specific types of conventional weapons, that is to say, to single out within each type of conventional weapon those whose use can be banned, above all, by virtue of their indiscriminate and barbaric effect.

From this point of view, for example, the use of napalm in

[1] See UN Doc. A/9215 (Vols. I and II), Twenty-Eighth Session, 7 November 1973, "Respect for Human Rights in Armed Conflicts"—Existing Rules of International Law Concerning the Prohibition or Restriction of the Use of Specific Weapons.

[2] Conference of Government Experts on the Use of Certain Conventional Weapons, International Committee of the Red Cross (ICRC), Geneva, 1975, pp. 39-45; Swedish Group Study: Conventional Weapons, Their Development and Effects from Humanitarian Aspect. Recommendation for Modernization of International Law, Stockholm, 1973.

towns and cities could be prohibited by virtue of its indiscriminate effect and the concentration of civilian population in such places.

The imposition of any bans or restrictions on the use of any type of conventional weapon must be based on strict reciprocity and universality. Conversely, the principle of reciprocity implies that a party would be absolved from the obligation not to employ a certain type of weapon if the other party has broken a similar obligation. It is essential that such conventions should be signed, above all, by all the permanent members of the UN Security Council and other countries with developed military industries.

These issues were discussed at the Third Conference of Government Experts on the Use of Certain Conventional Weapons, (Lugano, Switzerland, 1976), in the course of which some twenty proposals were examined.

On the issue of incendiary weapons, discussion centered on the proposals submitted by experts from twenty-one countries and the separate proposal made by experts from the Netherlands.

The first proposal defined incendiary weapons and spoke of the need to ban all such weapons with certain exceptions, namely the possibility of using incendiary and fragmentation weapons against aircraft, armoured vehicles and similar targets.

The Dutch experts proposed to divide all incendiary weapons into incendiaries in the broad sense and fire bombs proper, above all napalm bombs. They suggested that air or artillery bombardment with napalm projectiles of military objectives in densely populated areas should be banned, except in cases where such areas become the site of tactical operations or such operations are seen as inevitable. The expert from Spain suggested adding to this a ban on the use of incendiary weapons, particularly napalm, against military personnel.

The discussion of the use of incendiary weapons revealed that there exist areas of possible agreement on the prohibition of certain methods of employing incendiary weapons, although one cannot rule out the possibility of a future ban on the use of the more barbaric types of such weapons.

On the question of high explosive and fragmentation weapons, the overwhelming majority of experts agreed on the need to ban weapons that leave undetectable fragments (plastic splinters) in the human body and are therefore designed to cause long-term suffering.

In discussing the question of small arms,[1] the conferees came to the conclusion that they were not yet ready to come to agreement and that the issue required further research. However, it was suggested that in the future it would be possible to agree on certain parameters of bullet oscillation beyond which small arms must not be developed, thereby setting some limit to the bodily harm that can be inflicted on a person.

In the course of discussion of the prohibition or restriction of the use of mines and booby traps, the conferees examined the proposal submitted by British experts, which envisaged an obligation to record mine fields, provide mines with safety detonation, limit the planting of mines in populated areas, and ban the use of certain types of mines (trap mines and booby traps) and specifically the attachment of explosive devices to medical vehicles.

Experts from the socialist and developing countries expressed the view that the use of trick mines should be banned altogether because it constitutes an act of treachery. Such weapons harm, above all, the civilian population and unprotected military personnel. Medical experts, for their part, concluded that the effects of the use of concrete type of weapons should be determined based on the actual inflicted wounds, not on the amount of suffering they cause, as had been the criterion until then.[2]

On the whole, the Lugano Conference revealed some common ground in the positions, which raised hopes that an agreement might be reached in the near future.[3]

The Diplomatic Conference on Humanitarian Law at the Ad Hoc Committee in 1977 was devoted to a detailed discussion of concrete types of weapons. However, the problems and difficulties remained. The working group set up at the conference was unanimous in its desire to find a solution to the problem of undetectable fragments. It proposed that such weapons should be completely banned.

The working group suggested that the term "mine" should be defined as any explosive device planted on or under the ground, or concealed under any other surface (including liquid), for the purpose of exploding on contact with or in close proximity to man or vehicle. This definition, however,

[1] "High Velocity Small Arms and Ammunition", SIPRI Working Paper. February 1974.

[2] Doc COZU/9.9/INF.205.

[3] *ICRC Conference of Government Experts on the Use of Certain Conventional Weapons, Lugano, 28 January-26 February 1976*, Report: Geneva, 1976.

did not cover sea mines. Certain specifications were introduced in the proposal made by a group of States (Austria, Denmark, Spain, Mexico, the Netherlands, Great Britain, France, Switzerland, and Sweden) on the prohibition of mines and booby traps. The proposal stressed the need to register the location of mine fields and other explosive devices, limit the use of remotely delivered mines, curb the use of mines and other explosive devices in populated areas, and ban the use of certain types of explosive and non-explosive devices under any circumstances.

The working group concluded that it was possible to ban certain elements of the use of incendiary weapons, specially singling out flame throwers. This ban applied to the use of all ammunition designed, above all, to inflict burns or to set objects on fire with a flame resulting from a chemical reaction of the substance projected onto the target. Such weapons include flame throwers, napalm bombs, phosphorus grenades, and other ammunition containing substances that are sprayed onto the target. The working group stressed that it did not propose banning ammunition which could have accidental incendiary side-effects (flares, tracer ammunition, smoke pots, signals systems) in cases where they are used for the purposes for which they are designed.

Switzerland and Sweden reiterated their proposals on banning the use of fuel-air explosives. The use of this type of ammunition, they argued, causes a most horrible death. The authors of the proposal said it was admissible to use this type of weapon only for the purpose of destroying material objects, for example, for mine-field clearing.

Sweden specified its earlier proposal on the prohibition of small-calibre projectiles: it proposed, in particular, to ban the use of bullets that easily change direction, alter their shape, or split upon penetrating into the human body, and also high-velocity bullets. However, this proposal did not receive much attention in the Committee.[1]

If the international community could reach agreement on these issues, a tremendous step forward would be made in enhancing the protection of the civilian population and civilian objects and reducing the suffering inflicted on the victims of armed conflict.

However, there should be no illusions that conclusion of

[1] UN Documents, Official Records, A/CONF. 95/PREP. CONF;/CRP. 4, 31 August 1978, UN, New York.

an agreement on banning or restricting the use of certain types of weapons, would automatically remove such weapons from warfare or stop the process of their development. To achieve this aim, a special agreement is needed based on the above-stated principles.

The Conference of Government Experts in Lucerne and Lugano[1] also discussed so-called new weapons, which were in the process of laboratory development, such as weather modification weapons, geophysical, infrasound, microwave, and electronic weapons. The use of such weapons may have unpredictable consequences for man and the environment, and might even prove catastrophic for our entire planet.

The question of complete and comprehensive prohibition or restriction of the use of specific types of conventional weapons, and also of weapons of mass destruction, must be viewed in the context of the fundamental principle of international law—the prohibition of the use or threat of force.

This principle alone implies the prohibition of the use of all types of conventional weapons and weapons of mass destruction for aggressive or any other purposes in violation of the UN Charter.

From the standpoint of international law, today one can speak of the intimate connection between the prohibition of the use or threat of force, the prohibition and restriction of the use of certain types of weapons, and general and complete disarmament (UN General Assembly Resolution 2932 F [XXVII]).

Today, with the advanced development and sophistication of weapons and methods of warfare, the destructive capacity of conventional weapons, their barbaric nature and extremely dangerous consequences for future generations have grown to such an extent that it is becoming increasingly difficult to distinguish between conventional weapons and weapons of mass destruction. The issue of banning the development of new types of excessively injurious and destructive conventional weapons is of no less importance than banning the existing types of weapons of mass destruction. In the course of the discussion, one idea which gained considerable support was that prohibitive and restrictive rules should be based on the principle of respect for human rights in armed conflict.[2]

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[1] Doc. COZU/2/SK. 10, COZU/REP./6.

[2] Economic and Social Council. Official Reports, 60th Session, Suppl. No. 3, UN, New York.

That was precisely the approach finally adopted by the international community and the United Nations to the problem of developing and amending international humanitarian law, and specifically, the problem of banning or restricting the use of certain types of conventional weapons.

The Diplomatic Conference on International Humanitarian Law adopted two Additional Protocols, which specified new principles of international law applicable in armed conflicts. In turn, these principles have influenced the prohibition and restriction of certain types of conventional weapons.

On 9 July 1977 the Conference adopted by consensus a resolution setting forth a number of general criteria and enumerating the types of conventional weapons on which the greatest agreement was reached and those types on which there was no agreement. The resolution also requested the UN Secretary-General to call a special conference.[1]

The principle of indiscriminate use of weapons obligates the belligerents to indiscriminately use any weapon only against military objectives and armed forces. The Additional Protocols emphasized that military necessity was limited by the principle of proportionality. This principle implies that a certain weapon may be used only if civilian casualties and the damage to civilian objects correspond to the intended military effect of the use of that weapon (Paras. 4-5 of Art. 51 and Para. 3 of Art. 46 of the Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts). This restriction of military necessity by the principle of proportionality is of great importance for existing types of weapons, for new ones, and upgraded old types.

Another criterion for the restriction or prohibition of the use of conventional weapons is the principle of prohibition of damage to the environment. The adoption of these principles was largely influenced by recent armed conflicts, above all, U.S. aggression in Indochina.[2] A book published in Hanoi in 1975, entitled *Chemical Warfare*, includes the documents and reports presented at a scientific conference held in France in 1970. Taking part were scientists from the United States, Great Britain, Japan, the Soviet Union, and countries of Indochina. These documents reveal that in 1961 the Pentagon

[1] CDDK/SR. 57 p. 21.

[2] *Anti-Personal Weapons. The War in Indo-China 1961-1975, The Impact of the Viet Nam War on the Arms Race*, SIPRI, 1978, pp. 25-44.

started experiments with chemical weapons. A commission, ostensibly for land surveying in South Viet Nam, was sent to Saigon. Its real purpose was to select areas for carrying out experiments with poisonous agents. From 1961 to 1969, in South Viet Nam alone 13,000 sq. km of farm land (43 per cent of all arable land) and 2,500 sq. km of jungles and orchards (44 per cent of all forests), were sprayed with poisonous agents. In Kampuchea according to official reports, in a period of just 15 days in the spring of 1969, the Pentagon's experiments destroyed 10,000 hectares of rubber plantations. In addition, the U.S. Air Force dropped a total of 14.3 million tons of explosives on Viet Nam, Laos and Kampuchea, which averages 306 kilograms per inhabitant. This is fourteen times the per capita amount dropped by U.S. and British aircraft in World War II on Germany, Italy and Japan combined. During the same period of 1961-1969, an estimated 1,293,000 people were poisoned by these chemicals. According to authoritative international medical bodies, most of the victims developed serious chronic diseases, in particular, nervous (including paralysis), alimentary, eye disorders, and cancer. Tremendous damage was also done to flora and fauna over vast territories. This has had long-term effects on the climate in the region. The rapidly progressing soil erosion and other destructive processes have already disrupted the ecological balance, resulting in frequent dust storms, droughts, and floods, which used to be highly untypical of the region. Curiously enough, all this was predicted more than ten years ago by the British Nobel Prize Winner Prof. Dorothy Hodgkin. So far, science has not found a good way of combating these processes. The responsibility for this critical condition of the environment in Viet Nam, Laos and Kampuchea lies squarely with the Pentagon and the U.S. ruling circles. Sooner or later they will have to answer for their crimes. In 1970, the use of the herbicide dioxine resulted in congenital deformities, miscarriages and other damage to health in human beings and animals. However, the United States continues to manufacture this herbicide. In Kampuchea, 80 to 85 per cent of all forests were damaged or destroyed by defoliants and herbicides sprayed by U.S. aircraft.

The use of defoliants in Viet Nam has damaged not only the population and natural environment of that country, but also Americans themselves and their allies. For example, as a result of the use of the dioxine-containing defoliant Agent Orange, many Australian soldiers who took part in the Viet Nam War later became fathers of defective children. Among the children

of former participants in the Viet Nam War from the state of New South Wales, four were born with deformed hands, two with crippled legs, and one without an ear. Eleven of the fathers suffer from nervous disorders and ten have acute skin conditions. The biochemist David Walt, who works at Sydney's Child Medical Research Fund, believes these diseases and deformities are directly linked to Agent Orange. To back up his theory, he quotes similar information provided by U.S. doctors: the families of the 538 former U.S. servicemen exposed to Agent Orange in Viet Nam have given birth to 77 crippled children.

The extensive discussion at the Diplomatic Conference on International Humanitarian Law resulted in the adoption of Article 55 in the 1977 Protocol Additional to the Geneva Conventions of 1949 Relating to the Protection of Victims of International Armed Conflicts. The Article states: "Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods and means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population. Attacks against the natural environment by way of reprisals are prohibited."

A uniform understanding and uniform interpretation of "widespread, long-term and severe damage" is important for the practical application of both this Article and of a future convention banning military and all other hostile environment modification techniques. This convention was proposed by the Soviet Union. "Widespread" should be interpreted as covering an area of several hundred square kilometres; "long-term" should be interpreted as extending for several months; "severe" should be interpreted as causing substantial damage to human life, natural, economic or other resources.

The inclusion of these provisions in the Additional Protocol had a positive impact on the drafting of a convention under which the High Contracting Parties undertake to refrain from the use of environment modification techniques which can have widespread, long-term or severe consequences of destroying, damaging or inflicting loss on any High Contracting Party. The Parties to the Convention undertook not to use for military purposes any artificially induced changes in the environment, such as earthquakes, seismic sea waves, disruption of ecological balance, changes in weather elements (clouds, precipitation, cyclones, storms), the climate, ocean currents,

and the state of the ozone layer and the ionosphere.

Of great importance is the uniform interpretation of the concept "agents capable of influencing the natural environment", as stated in Article II. The Article stipulates that this concept includes all means intended to alter (by intentional manipulation of natural processes) the dynamics, composition or structure of the earth, including its biosphere, lithosphere, hydrosphere, atmosphere, or near-Earth outer space.

In other words, the Convention applies only to the effects of manipulation of natural processes, not effects induced by the use of other means of warfare, as reflected in the Additional Protocol. Although some of these means of influencing the environment have not yet appeared, their development is theoretically feasible.

On the other hand, the Convention encourages the use of modern technological advances and means of affecting the natural environment for peaceful purposes and envisages an extensive international exchange of scientific and technological information.

Finally, another important general criterion influencing the restriction or prohibition of the use of conventional weapons is Article 36 of the Additional Protocol, which states that "in the study, development, acquisition or adoption of a weapon, means or methods of warfare, a High Contracting Party is under the obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party".

The Soviet delegate pointed out at the Diplomatic Conference after the adoption of Article 36 that the Article applies not only to the production of weapons, but to their importation from abroad, as well.[1] However, the Italian and French delegates did not agree with this interpretation. Of fundamental importance in international humanitarian law are the provisions of the Additional Protocol that set forth such principles of prohibition or restriction of the use of weapons as the prohibition of infliction of excessive injury and indiscriminate use of means of warfare.

For the first time in the history of non-international armed conflicts, these provisions have been embodied in treaty form, the new elements of which, of course, have their own distinctions

[1] CDDK/SR 39, p. 11. The same point of view was expressed by the Swiss delegate (CDDK/SR 39, p. 12).

associated with the correlation of international and national law. The main purpose of the restrictions in conditions of non-international armed conflicts is to provide the utmost protection for the civilian population, which always suffers the most in such conflicts. This becomes especially obvious if we look at the internal armed conflict in El Salvador, where President Napoleon Duarte's government is waging an all-out war against its own people, destroying entire villages and giving no quarter to either women, children, or the aged. One horrible example is Operation Sandwich, in which 1,500 civilians were driven into caves and then bombed from the air. Another example is the tragedy on the River Lempa, in which in the course of two days several thousand refugees were butchered in a cross-fire of artillery and machine-guns.

The above-mentioned provisions were adopted at the Diplomatic Conference on International Humanitarian Law after a protracted discussion in which several participants attempted to trim the Protocol to a minimum or refused to sign it outright.

All these general principles, as embodied in special international legal instruments, are intended to serve as the foundation for the prohibition or restriction of the use of specific types of weapons.

§ 3. Weapons of Mass Destruction and International Humanitarian Law

The use of weapons of mass destruction is considered to be a flagrant violation of international law, above all because it inevitably results in the mass destruction of the civilian population and civilian buildings and installations. It is also a gross violation of the fundamental principles and rules of international humanitarian law.

Nevertheless, contemporary international law has no provision banning the use of weapons of mass destruction in general or any specific type of such weapons, with the exception of the Geneva Protocol on Gas and Bacteriological Warfare (1925).

The introduction to the Draft Additional Protocols to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, drawn up by the International Committee of the Red Cross, states, in part: "It shoud be recalled that, apart from some provisions of a general nature, the ICRC has not included in its drafts

any rules governing atomic, bacteriological and chemical weapons. These weapons have either been the subject of international agreements such as the Geneva Protocol of 1925 or of discussions within intergovernmental organizations."[1]

Many military experts in the West believe that the use of so-called tactical atomic weapons is permitted in attacking a military target. However, they seem to forget that an atomic weapon remains under all circumstances a "blind" weapon of mass destruction capable of killing indiscriminately combatants and civilians alike.[2]

Characteristic in this respect was the position adopted by the Japanese State Court in the well-known Shimoda Case in connection with the suit brought by the government of Japan in respect to the U.S. atomic bombing of Hiroshima and Nagasaki.[3]

The court stated that the atomic bombing of an unprotected city should be treated on a par with the bombing of a military target. It constitutes a hostile act in violation of contemporary international law, since the damage produced by the atomic bombing was comparable to that which could have resulted from the use of conventional "blockbuster" bombs. Even if the target of such bombing had been only military objectives, the use of the atomic bomb would have been an illegal hostile act since it constituted an air raid on an unprotected city.

The court admitted that the conclusion that the nuclear bomb inevitably constitutes a prohibited weapon since it is much more brutal than all previously known types of weapons, is not universally recognized. This is because the international law of war is shaped not only by human emotions but also by the principles of military necessity and efficacy, constituting a compromise between these two factors.

In his report submitted to the 11th Congress of the International Association of Democratic Jurists in Malta, the U.S. lawyer John H. E. Fried[4] suggested an original explanation concerning the question of why a nuclear war should be considered unlawful. His arguments were based on the following:

[1] ICRC. Draft Additional Protocols to the Geneva Conventions of August 12, 1949, Commentary, Geneva, October 1973, p. 2.

[2] Antonio Cassese, "Means of Warfare; The Traditional and the New Law". *The New Humanitarian Law of Armed Conflict*, Napoli, Ed. Scientifica, 1979, p. 173.

[3] "Japanese Annual of International Law", No. 8, 1964, pp. 234-242; A/9215 (v. II), pp. 16-24.

[4] J. Fried, "First Use of Nuclear Weapons", In: *Bulletin of Peace Proposals*, Oslo, 1981, Vol. 12, No. 1, pp. 21-29.

the purpose of a nuclear war is destruction. This runs counter to the definition of war as an organized military engagement between armed forces for the purpose of achieving victory, that is to say, it contradicts any rational positive achievement of that aim.

Nuclear warfare totally negates existing principles and rules of international humanitarian law applicable in armed conflict (the Hague Conventions of 1899 and 1907 and the Geneva Conventions of 1949). Prof. Fried points out that Article 7 of the U.S. Armed Forces manual of 1956 on the rules of warfare on land, states that the cited provisions of the above-mentioned treaties are binding upon the U.S. armed forces. This alone, he writes, outlaws the first use of nuclear weapons.

Prof. Fried emphasizes that nuclear warfare makes it impossible for the belligerents to fulfil their obligations arising from the termination of hostilities. In particular, this applies to obligations connected with the occupation of hostile territory (the Hague Convention of 1907).

The use of nuclear weapons would make impossible the implementation of the Hague Conventions of 1907, the Geneva Conventions of 1949, and the Protocols Additional to them (1977). The latter, Prof. Fried notes, have the purpose of confirming the legal force of the Hague and Geneva Conventions.

The use of nuclear weapons would make it impossible to observe the rights of neutral states (Art. I of the Fifth Hague Convention of 1907), since nuclear radiation can spread across State frontiers over vast territories. Finally, Prof. Fried specially points out the danger of accidental use of nuclear weapons, which nevertheless would be illegal. He writes that a nuclear war could accidentally break out as a result of delegating the right to issue orders on the use of nuclear weapons to individual commanders stationed in different parts of the world. The same can happen if in a military crisis, a pilot misunderstands an order issued to him and drops the A-bomb by mistake. Finally, a war could break out as a result of delegating the right to make decisions to computers. In the United States in 1978-1980 alone, there were four known occasions when computers reported that Soviet nuclear missiles were on the way to the U.S. and there were only ten or fifteen minutes for detecting the error.

Prof. Fried believes that first use of nuclear weapons is in conflict with "the social conscience", as emphasized in the Preamble to the Hague Conventions. One cannot ignore the

Martens Clause, which underlies the provision of Article 22 of the Hague Conventions of 1899, according to which "the right of belligerents to adopt means of injuring the enemy is not unlimited". This principle was reaffirmed in the nuclear age in the Geneva Conventions of 1949 and the Protocols of 1977 additional to them.

Prof. Fried concludes that it can be said that modern international law forbids the first use of nuclear weapons. He believes there is no need for a special international agreement that would establish such a ban. Moreover, since international law bans the first use of nuclear weapons, there can be no question of nuclear retaliation. Thus, from the viewpoint of international law, nuclear war as such is outlawed.

Professor Fried condemns the view that with the advent of nuclear weapons international law applicable to armed conflicts becomes obsolete. He cites the view expressed by the authoritative International Conference of the Red Cross of 1965, whose resolution declares that the general principles of law applicable in armed conflicts shall also be applied to conflicts involving the use of nuclear or similar weapons of mass destruction.[1]

The Soviet Union has always favoured banning the use of nuclear weapons.[2] In 1946, the Soviet Union proposed a draft international convention banning the production and use of weapons based on nuclear energy for the purpose of mass extermination of people. A TASS statement of 25 September 1949 in connection with the first Soviet atomic weapon test declared: "Despite the fact that the USSR possesses atomic weapons, the Soviet Government will remain committed to its position demanding an unconditional ban on the use of atomic weapons."

The Soviet Union takes this approach in relation to all types of weapons of mass destruction. The USSR has always made use of every opportunity to either strengthen the existing ban on the use of a certain weapon or to work for the elaboration and adoption of a special international legislative act banning

[1] Resolution XXVIII, "Protection of Civilian Population Against the Danger of Warfare", *International Conference of the Red Cross, Resolutions*, Vienna, 1965, p. 22.

[2] For more detail see: A.I. Yorysh, I.D. Morokhov, S.K. Ivanov, *The A-Bomb*, Ed. by Academician E.P. Velikhov, Moscow, 1980, A.A. Roshchin, *International Security and Nuclear Weapons*, Moscow, 1980; O.V. Bogdanov, *International Legal Problems of Disarmament*, Moscow, 1979; A. Gromyko, V. Lomeiko, *New Thinking in the Nuclear Age*, Moscow, 1984 (all in Russian).

the use, manufacture and proliferation of a given weapon, stressing that such weapons constitute the greatest threat to mankind.

In 1928 the Soviet Union was among the first to ratify the Geneva Protocol of 1925 banning the use of bacteriological and chemical weapons. The efficacy of this Protocol was weakened by the fact that for a long time a number of States refused to sign it, including the United States, which used chemical weapons in Viet Nam. Only in 1975 did the USA accede to the Protocol.

In the 1950s, the Soviet Union and other socialist States conducted intensive activity urging more countries to sign the Geneva Protocol.

The Soviet representative in the UN Security Council proposed calling upon all States that had not yet acceded to the Geneva Protocol to do so. However, the United States and its allies abstained in the vote, thus preventing the adoption of the Soviet proposal. In 1966, Hungary submitted to the General Assembly a draft resolution calling upon all States to accede to the Geneva Protocol, and for those States that have already done so, to scrupulously adhere to it. The General Assembly Session adopted a resolution reflecting Hungary's proposal. At the same time, the USSR and other socialist States waged a campaign to compel all countries to eliminate chemical and bacteriological weapons from their arsenals. The Soviet Union believes that, having succeeded in banning the use of these two types of "silent weapons", the international community should also destroy their stockpiles. At the Twenty-Fourth General Assembly (1963), the USSR and other socialist countries submitted a joint draft convention banning the development, manufacture and stockpiling of chemical and bacteriological (biological) weapons. This initiative received extensive support both at the session and in the First Committee.

However, several Western imperialist States refused to discuss the question of chemical weapons under the pretext that it was impossible to verify their deployment. Then, in 1971, the Soviet Union and other socialist States submitted to the First Committee a draft convention banning the development, manufacture and stockpiling of bacteriological (biological) and toxin weapons and demanding elimination of existing stockpiles. On 10 April 1972 this special convention was signed in Moscow, Washington and London. In 1975, the Soviet Union, the United States, and Great Britain declared in the

First Committee that they possessed no stockpiles of bacteriological weapons.

This Convention completely ruled out the possibility of the outbreak of a bacteriological war. It was a tangible step toward disarmament and a logical follow-up to the Geneva Protocol of 1925.

Since then, the Convention has amply demonstrated its effectiveness. By 1984, ninety countries have acceded to it, even though thirty-three of these have never ratified the Convention. The International Review Conference on the Geneva Convention (Geneva, March 1980) noted the tremendous importance of this document as a step toward disarmament, and called upon more countries to sign it.

At the very end of the conference, certain quarters wishing to see an escalation of international tensions accused the Soviet Union of violating the Geneva Convention. In reply, the Soviet delegation declared that the USSR always strictly adhered to any international convention that it had signed, including that one. The delegation reiterated the Soviet declaration of 1975 that the USSR possesses no bacteriological (biological) agents or toxins, weapons, equipment, or delivery systems specified in Article I of the Convention.

The conclusion of the Convention banning bacteriological weapons lent increased urgency to the need to ban chemical weapons as well. To this day, the issue is high on the agenda of the international campaign for disarmament. The Soviet Union's attitude in this matter has always been consistent. Back in 1972, the USSR submitted to the First Committee a draft convention on banning chemical weapons. At the 1974 Soviet-U.S. Summit, the two sides agreed that the First Committee would examine the possibility of a joint initiative aimed at concluding an international convention that would ban the most dangerous, lethal chemical weapons. In 1976, Soviet-American talks were started. Substantial progress was made on certain questions, above all, the scope of the ban. At the outset of the negotiations, the U.S. side agreed to ban only the most dangerous, lethal chemical weapons, but later an agreement was reached that the convention would cover all types of chemical weapons. The two sides agreed upon the procedure for declaring the existing stockpiles and on the principle of verification, which would combine both national and international measures, including the setting up of a consultative committee.

However, through no fault of the Soviet side, the talks pro-

gressed at a snail's pace, and in 1980 the U.S. broke off negotiations altogether.

The Soviet Government has always stressed its readiness to bring the talks to a successful conclusion. It pointed out that all political and technical problems obstructing negotiations were closely interrelated and should be examined as a package. Soviet expert V. F. Petrovsky (Ph. D., History) writes in this connection: "The Soviet side believes that the issue of verification should not become a stumbling block. It can be tackled by national means of verification, combined with intelligent international measures".[1]

It is clear, however, that the United States and its NATO allies did not want a convention—they were in the midst of developing new types of chemical weapons. The U.S. was building munitions plants to manufacture binary weapons, which were to be mounted on missiles of various ranges. Great Britain had similar plans, and conducted military exercises with chemical weapons. West Germany was intensifying preparations for chemical warfare to be waged by joint NATO forces. At present, the United States is supplying chemical weapons to the insurgent forces in Afghanistan, while in El Salvador the ruling junta is bombarding its own civilian population with U.S.-made chemical bombs.

The Soviet Union wants to see the signing as soon as possible of an international convention that would eliminate chemical weapons from the military arsenals of all countries. This would be a big step towards curbing the arms race and strengthening international security.

Speaking at a press conference in Geneva on 8 August 1987 in connection with the disarmament conference, Soviet Foreign Minister Eduard Shevardnadze stated: "A convention banning chemical weapons and eliminating their stockpiles must be concluded as soon as possible." At the negotiations, he said, the Soviet delegation would "proceed from the need to give statutory force to the principle of mandatory inspection on challenge without the right of refusal".

The Soviet Foreign Minister declared that, in view of the urgent need for an international convention, the Soviet Union was inviting the participants in negotiations on chemical weapons to the Soviet munitions plant at Shikhany to study samples of Soviet chemical ammunition and the techniques of destroy-

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[1] See: V. F. Petrovsky, "Mass-Destruction Weapons: Who Opposes Their Prohibition" In: *New Times*, No. 39, 1981.

ing chemical weapons at a mobile facility. Moreover, in the near future, experts will be invited to a chemical weapons disposal facility now under construction near the town of Chapayevsk.

The issues of banning or restricting the use of weapons of mass destruction are today closely linked with modern technological advances in conventional armaments which can transform conventional weapons into weapons of mass destruction. These new technological achievements can also lower the threshold of already existing weapons of mass destruction, making them similar to conventional weapons. Unscrupulous political leaders in the West make use of this process to justify the possible use of weapons of mass destruction and to escalate international tensions. A clear example of this approach is the "limited nuclear war" concept advanced by the U.S. government in 1980.

The former U.S. President's "New Nuclear Strategy" Directive is a cause for concern for many nations and governments, since it has far-reaching international implications, aggravating international tensions and increasing the threat of nuclear war.

In formulating foreign policy, the United States has always ignored the universally recognized principles and standards of international conduct. Directive 59 is an expression of the U.S. "realistic" school of law which treats international law purely pragmatically, regarding it as a tactical means for achieving U.S. foreign policy goals, not as a reality reflecting the objective patterns of development of international relations toward peaceful coexistence.[1] The legal nihilism of this doctrine is expressed in intense attacks on any international treaty restricting the arms race.

Directive 59 aims at giving a military advantage to the party that shoots first and will thus have the opportunity to destroy all the enemy's installations. The Directive proclaims the admissibility of a limited and preventive nuclear war. It is in flagrant violation of international law, because the party that attacks first in effect becomes the aggressor. In 1974, the U.S. ambassador to the UN General Assembly voted for a definition of aggression according to which the aggressor is the State that first uses armed force in violation of the UN Char-

[1] See, for example, M. McDougal, *International Law, Power and Policy*, Recueil des Cours, Leyden, 1953, Vol. 82, No. 3; Morton A. Kaplan, N. Katzenbach, *The Political Foundation of International Law*, Wiley, New York, London, 1961.

ter. Article 5 of the Charter contains a list of actions that should be qualified as aggression, concluding that "no consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression". Aggression is qualified as a crime against international peace and incurs international responsibility.

The U.S. President's Directive is the result of the U.S. nuclear strategy of massive retaliation, as set forth in Directive PD-12 of 24 August 1977. In recent years, the strategy of nuclear superiority has been reflected in plans to build mobile experimental intercontinental ballistic missiles (otherwise known as MX), to be deployed in 1986-1989, Trident submarine-launched ballistic missiles (the first such submarine has already been launched), strategic cruise missiles to be mounted on heavy bombers (deployment in 1982-1990), Tomahawk medium-range cruise missiles and Pershing II medium-range ballistic missiles (deployment in Europe in 1983-1988).

Directive 59 is closely linked to the December 1979 decision of the NATO Council to deploy U.S. medium-range missiles in Europe. This directive, together with the above-mentioned plans for deployment, under all circumstances creates a threat-of-force situation.

The big-stick approach has always characterized U.S. foreign policy. According to a report published by the Brookings Institution, from 1946 to 1975 the United States directly or indirectly resorted to force or threatened to send troops 215 times, of which 30 times it threatened to drop the A-Bomb. Directive 59 seeks to create a situation of superiority in order to force upon the socialist countries the U.S. model of world development. However, the threat of force is a direct violation of the UN Charter. All the talk about safeguarding U.S. security cannot be taken seriously, since security based on military superiority cannot be stable. The experience of Nazi Germany shows that those countries which sought to achieve military superiority under the guise of safeguarding their defences, in the long run became aggressors and unleashed World War II.

Directive 59 contradicts the principle of equality and equal security and also the principle of refraining from causing damage to any of the Contracting Parties, especially in the context of the SALT II Treaty. In concluding this Treaty, both sides took into consideration all existing weapon systems. Proceeding from this principle, the concept of security, both national and international, is based on limiting and reduc-

ing armaments up to and including their total elimination.

Directive 59 also violates another fundamental principle of contemporary international law—the principle of disarmament embodied in the UN Charter and in numerous treaties and agreements. This principle makes it binding upon all States to conduct disarmament negotiations and seek to reach agreements on disarmament. Therefore, any action aiming at escalating the arms race and placing artificial obstacles to disarmament negotiations can only be regarded as unlawful.

From the viewpoint of the universally recognized principles of international law, the doctrine of limited nuclear war should also be regarded as illegal. The use of nuclear weapons in a first strike, even against purely military targets, affects large areas around these targets, where the civilian population, buildings and installations are bound to suffer, to say nothing of the long-term damage to the environment.

The "limited" use of nuclear weapons can be limited only theoretically. Any nuclear attack would trigger off a global nuclear war resulting in the total annihilation of the civilian population. This would be in flagrant violation of the laws and customs of war, as set out in the Geneva Conventions of 12 August 1949 for the Protection of War Victims and in the 1977 Protocol Additional to the Geneva Conventions and Relating to the Protection of Victims of International Armed Conflicts.

This strategy permits the use of nuclear weapons at any time the United States considers that in some part of the world something constitutes a threat to its national security. But since in the thinking of the U.S. ruling quarters "vital interests" and "national security" constitute global and arbitrary concepts, the possibility of unleashing a nuclear war is absolutely unlimited.

Earlier, the former President issued Directive 51, which openly spoke of the possibility of using nuclear weapons in the Middle East. What is not taken into account is that the "local" use of nuclear weapons in that region could result in the annihilation of entire countries.

A sinister possible forerunner of a local nuclear war in the Middle East was the air raid by fourteen Israeli aircraft on Iraq's atomic complex near Baghdad on 7 July 1981. This was yet another in the series of international crimes committed by Israel in its 14-year-old war against the Arab peoples. Israel's foreign policy flouts all the basic principles of international law.

It is obvious to anyone who objectively reviews the situation in the Middle East that those in power in Israel are to blame for the explosive situation in the region, the numerous obstacles to a Mideast settlement, all the domestic problems of the Arab countries and of Israel itself, and for the continuing massacre of innocent civilians. The Israeli government prefers to ignore such fundamental principles of international law as the self-determination of peoples, respect for national sovereignty and territorial integrity, respect for the laws and customs of war, and the principle of equal security. The bombing of Iraq's atomic facility is in line with Israel's policy of international terrorism, aimed at wiping out the Palestinian Arabs as a nation, annexing Arab lands, and preventing any democratic change in Israel itself. The methods and means of this policy are diverse: systematic massive armed attacks on Lebanon and on defenceless Palestinian refugee camps, assassinations of prominent community leaders and human rights champions in the occupied Arab territories, assassinations of activists of the Palestine resistance movement around the world, and, finally, air raids on the Iraqi atomic complex.

The atomic complex in Iraq was built in compliance with the Treaty on the Non-Proliferation of Nuclear Weapons, of which Iraq is a signatory, and under the supervision of the International Atomic Energy Agency. Iraq was acting in accordance with Articles III, IV and V of the Non-Proliferation Treaty, which permits the use of nuclear energy for peaceful purposes, given certain international guarantees. The IAEA's Deputy Director and prominent Austrian scientist, Johann Grümm, said in an interview that Israeli Prime Minister Menachem Begin's allegations that the atomic centre in Iraq was designed to manufacture atom bombs to destroy Israel were absolutely groundless. He confirmed that all the nuclear installations in Iraq were covered by IAEA safeguards.

Israel has not acceded to the Non-Proliferation Treaty. According to reports in the Western press, it has a sizeable arsenal of nuclear bombs and is actively cooperating with South Africa in developing even more advanced nuclear weapons. Evidently, Israel is preparing for a nuclear war against its Arab neighbours. Israel's aggressive act against Iraq violates the most elementary international rules of warfare. The Iraqi nuclear complex is a peaceful facility using nuclear energy for peaceful purposes. According to the Geneva Conventions of 1949 for the Protection of War Victims and Art. 56 of the 1977 Protocol Additional to the Geneva Conventions and

Relating to the Protection of Victims of International Armed Conflicts, constructions and installations containing dangerous forces are protected by international law. Causing damage to them is prohibited, since it can result in extensive civilian casualties and cause damage to the natural environment. Incidentally, this provision of the Protocol was drawn up and adopted with the participation of Israel and the United States. Moreover, this was the second time that Israel tried to destroy Iraq's nuclear complex—the first attempt was made on 27 September 1980.

The international community condemned this act committed by Israel as a threat to international peace and security. However, the crime was perpetrated with the connivance and support of the United States. U.S. complicity in Israel's international crimes consists not only in the fact that the USA supplied the fourteen bombers that raided the complex and not even in the extensive military aid rendered to Israel year in and year out, but in America's active involvement in the planning and joint execution of a whole series of international acts of terrorism. It comes as no surprise that the U.S. President was given advance notice of this raid.

The Israeli air raid on the nuclear complex in Iraq was an attempt to demonstrate the possibilities of a so-called limited nuclear war against the Arab countries. There is increasing talk in the Western press today of the possible use of the neutron bomb against the Arab oil-producing countries which, according to U.S. strategists, would kill off the "unwanted" Arab population but spare the oil, rigs, pipelines, etc. Israeli military leaders intend to play the key role in these plans.

A UN-sponsored study, published in New York in September 1981 under the title *Israeli Nuclear Armament*, reveals Tel Aviv's plans to use nuclear weapons against its neighbours. Earlier, the UN General Assembly had stated that the development of nuclear weapons in Israel, especially given the rising tensions in the region, causes grave concern in the United Nations. The study reveals that the United States and other Western powers are actively cooperating with Israel, supplying it with all the necessary materials and equipment, and training Israeli engineers and technicians.

All this raises the question of the international responsibility of Israel and its overseas patrons, and specifically the international criminal liability of those directly involved in the barbarous bombing raid. Obviously, the Security Council, which has the right to adopt binding decisions, could have called

Israel to account. However, the U.S. representative always vetoed any such action.

As a result of NATO's decision to deploy medium-range missiles, in the event of nuclear war Europe would become the principal theatre of military operations.

The fact that U.S. strategists are even considering such a thought shows that Washington does not care about the future of Europe, or even of the USA, for that matter. *The Nation* weekly wrote in this connection: "The National Security Council estimated a couple of years ago that 'at a minimum' 140 million Americans would die in a strategic nuclear war and 113 million in the Soviet Union".[1]

The weekly goes on to say: "According to scientist Bernard T. Feld, editor-in-chief of the *Bulletin of Atomic Scientists*, a major Soviet attack against missiles, air bases and other military facilities in a so-called limited war would contaminate five million square miles with radioactivity. This is an area equal to the entire United States. If there were 100 million survivors in so-called shelters, he says, they couldn't survive for long."[2]

Presidential Directive 59 is, in effect, based on the first-strike concept, constituting the preparation for an aggressive war in violation of international treaties, agreements, and commitments. The Charter of the Nürnberg Tribunal, the provisions of which have become universally recognized principles of international law, qualifies such actions as a crime against peace. Therefore, the U.S. government's claim that Directive 59 has to do with a retaliatory strike, does not hold water, since no one is planning to attack the United States.

At the Thirty-Sixth General Assembly, the Soviet Union proposed that the UN should adopt a Declaration on the Prevention of Nuclear Catastrophe. The Soviet Union submitted a draft resolution, which reads, in part: "Recognizing that all the horrors of past wars and all other calamities that have befallen people would pale in comparison with what is inherent in the use of nuclear weapons capable of destroying civilization on earth." The United Nations solemnly proclaims: "1. States and statesmen that resort first to the use of nuclear weapons will be committing the gravest crime against humanity" ... "3. Any doctrines allowing the first use of nuclear weapons and any actions pushing the world towards a catastrophe are incom-

[1] *The Nation*, New York, 4 April 1981, p. 389.
[2] *Ibidem*.

patible with human moral standards and the lofty ideals of the United Nations'."[1]

The proposal received broad support at the General Assembly.

In January 1986, the Soviet Union proposed a wide-ranging plan to eliminate all nuclear weapons by the year 2000. On 8 December 1987 the USSR and the USA signed the Treaty on the Elimination of Their Intermediate- and Shorter-Range Missiles. The accord stipulates the elimination of 826 Soviet and 689 American medium-range missiles, including 470 and 429 deployed ones, respectively. What puts the Treaty in a class by itself is that for the first time in history the signatories agreed to scrap a specific class of nuclear weapons under strict control. This shows that a nuclear-free and non-violent world order based on the rule of law, is possible.

The atmosphere conducive to the Treaty must be preserved for further consistent moves to radically reduce strategic offensive weapons while observing the ABM Treaty, as well as to limit and stop all nuclear weapons tests and to establish effective control over all nuclear explosions.

This success in eliminating nuclear weapons should not be undermined by a conventional arms race, and conventional armaments must also be cut and banned. The Soviet plan for eliminating nuclear weapons is based on universally recognized principles and standards of contemporary international law and serves the interests of all nations.

The Soviet doctrine of universal security is based on such generally accepted principles of international law as respect for national sovereignty and territorial integrity, non-interference in domestic affairs, self-determination of peoples, equality, equal security, disarmament, and peaceful settlement of disputes. In our age of high technology and nuclear energy, with the tremendous stockpiles of weapons of mass annihilation, any other approach would push the world to the brink of a self-destructive global war.

In September 1975, the Soviet Union submitted a draft international agreement entitled "On the Prohibition of the Development and Manufacture of New Types of Weapons of Mass Destruction and New Systems of Such Weapons". The General Assembly Session passed a resolution urging the First Committee to finalize the text of this agreement.

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[1] "Prevention of Nuclear Catastrophe"—Draft Declaration of the UN General Assembly of 22 September 1981. See: *Pravda*, September 24, 1981.

In 1976, the Soviet Union, basing itself on General Assembly Resolution 3479 (XXX), submitted to the First Committee a draft agreement on the universal prohibition of the development and production of new types and systems of weapons of mass destruction. In 1977, taking into account the proposals made by several other countries, the Soviet delegation submitted an additional draft, which provided for the possibility of concluding separate agreements banning specific types of weapons of mass destruction. The Stockholm International Peace Research Institute noted in its 1978 Yearbook: "The idea of slowing down the qualitative arms race by barring new, potentially dangerous weapons development aroused a positive response. It is generally considered easier to ban arms which are at the research and experimentation stage than to eliminate those already developed, manufactured and stockpiled in world arsenals."[1]

This approach is quite sensible because the development of new types of weapons of mass destruction is not called for by military necessity, since today the major world powers have already accumulated sufficient stockpiles of weapons of mass destruction capable, both in a first strike and in retaliation, of performing the same function, namely of putting the enemy forces out of action.[2]

The prominent French strategist, Gen. André Beaufré, noted the need to put a voluntary limit on new types of weapons whose military and political consequences would be hard to foresee. This concerns, for example, enhanced radiation weapons using charged or neutral particles (neutrons, protons, neutral atoms, etc.) to destroy biological targets.

Today, scientific principles already exist for developing such particle-beam weapons. Their destructive action would be similar to that of the penetrating radiation of a nuclear blast. At present, sufficiently powerful beams of charged or neutral particles can be produced by accelerators, which are extensively used in high-energy and nuclear physics and other branches of science and technology. A number of countries are developing fundamentally new methods of accelerating charged particles which, together with recent advances in superconductor technology, make it theoretically feasible to reduce the size and weight of accelerators and their power supply systems,

[1] *World Armaments and Disarmament*, SIPRI Yearbook 1978, London, Taylor and Francis Ltd., 1978, p. 383.

[2] See, for example: "Electric Acoustic and Electromagnetic Weapons", in: *Anti-Personnel Weapons*, Taylor and Francis, London, 1978, pp. 202-211.

rendering them sufficiently compact to be used as weapons. Recently published Congressional Hearings reports reveal that the United States already has a research programme aimed at developing such weapons.

Another possible future weapon of mass destruction is based on the use of infrasound generators. Scientific literature describes a broad range of destructive effects—mechanical, biological, neuro-chemical—that infra-sound can produce in man and other organisms. Experts have expressed grave concern about the harmful effect of low-intensity subsonic vibrations on the brain and nervous system as a whole and, consequently, on man's intellect and psychological state. In assessing the potential danger of infrasound as a weapon of mass destruction, it is important to bear in mind its ability to penetrate through virtually any obstacle and travel a great distance without any noticeable attenuation.

It is a well-established fact that radio-frequency radiation over a broad range of frequencies has a harmful effect on the heart, brain, and central nervous system. These conclusions are based on the findings of basic research into the so-called non-thermal effects of electromagnetic radiation on biological organisms. Such radiation can damage or disrupt the functioning of man's internal organs or alter his behavior.

Many countries have a sufficiently developed electronics industry to be able to manufacture electromagnetic generators. They produce powerful high-frequency generators, radars and a variety of other electronic devices, whose efficiency and compactness is increasing every year. The average power output of electromagnetic generators has increased a hundredfold over the last four years. Scientists predict that in about five to six years laboratories will develop generators capable of transmitting electromagnetic radiation of tremendous power over distances of several hundred miles, with the density of radiation reaching dangerous levels over many square miles. It is obvious that in time such generators could be used as weapons of mass destruction.

There is much talk in the West of maintaining the strategic balance, reducing armaments, and developing reliable systems of verification. In reality, however, the West does everything to stall negotiations on arms reduction. Some Western experts believe that the development and introduction of new types of weapons would force the parties concerned to start negotiating new, complex verification measures. However, all this

would be worthwhile if such weapons systems prove their viability, low cost, and stabilizing effect.[1]

The Soviet Union has many times pointed out the unsoundness of such reasoning in general, and today in particular, when an approximate strategic balance has been reached. With the appearance of new types of weapons, the difficulty will lie not only in elaborating new verification systems and giving them statutory force in relevant conventions, but also in the unpredictable political and psychological implications of such weapons. Today, the very research and development of new types of weapons is a destabilizing factor.

From the very moment the above question arose, two approaches emerged. The USSR and other socialist countries have always believed that the best solution is to conclude a comprehensive treaty, because this would immediately remove the possibility of developing any new type or system of weapons. However, this approach does not rule out the possibility of reaching partial agreements. The relevant Soviet draft treaty envisages the obligation to refrain from developing and manufacturing new types of weapons of mass destruction and new systems of such weapons. The proposed criterion of such a ban is either already existing scientific and technological principles which have not yet been applied, individually or in total, in developing new weapons of mass destruction, or scientific and technological principles that may be discovered in the future and used to develop a weapon as powerful or more powerful than existing weapons of mass destruction. Whenever there appears a new area of development or manufacture not covered by the agreement, the participants must conduct negotiations to apply the ban to possible new types of weapons and weapon systems.

The annex to the draft treaty contains a tentative list of types and systems of mass destruction weapons that are to come under the ban: radiological non-explosive weapons based on radioactive materials; radiation weapons empoying charged or neutral particles to destroy biological targets; infrasonic weapons using low-frequency acoustic radiation to affect biological targets; and weapons using electromagnetic radiation to affect biological targets.[2]

The draft provides that each State party to the treaty under-

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[1] MacGeorge Bundy, "Maintaining Stable Difference", *International Security*, Cambridge, 1978/1979, Vol. 55, No. 3, p. 15.

[2] CD/35, 10 July 1979.

takes, in conformity with its constitutional procedures, to take necessary steps to ban and prevent any activity incompatible with the present treaty on its own territory and on territories under its jurisdiction or control.

The draft treaty provides ample opportunity to all member States to develop and use scientific research and discoveries exclusively for peaceful purposes without any discrimination whatever and also to promote scientific and technological cooperation in utilizing the latest scientific discoveries and technological achievements for peaceful purposes. It also provides for the possibility, if need be, of concluding agreements banning specific types and systems of mass destruction weapons.

From the very beginning, the United States, Great Britain, Canada and several other NATO countries opposed the conclusion of a comprehensive agreement, claiming that the object of prohibition was too vague and that verification difficulties would be insurmountable.

As far as the first argument is concerned, the draft contains not only criteria of prohibition, but a list of new weapon types to be banned; the second argument, which is closely linked with the first, cannot be taken seriously.

The countries listed above, however, agreed to ban only specific types of new weapons of mass destruction, on which an agreement will be reached. This position was expressed in several draft resolutions they submitted starting with the Thirty-Second Session of the UN General Assembly.

The Soviet Union believes that the issue of banning the development of new types and systems of weapons of mass destruction is becoming increasingly urgent, since the growing stockpiles of such weapons and the appearance of even more destructive types, increase the threat of a global war. At the Thirty-Third General Assembly, the USSR spoke of the need to speed up negotiations in the First Committee and emphasized its own readiness to come to terms on this vital issue and to accelerate the drafting of special agreements on specific types of weapons where necessary.

In accordance with the 1969 Vienna Convention on the Law of Treaties, the draft resolution submitted by the socialist countries calls upon all States to refrain from any actions that could have an adverse effect on the negotiations under way.

At the same Thirty-Third General Assembly, Great Britain submitted its own draft drawn up jointly with other NATO members and also Japan and Uruguay, proposing that negotiations be pursued for the purpose of banning or limiting so-

called identified types of weapons. This draft lacked the most important element of the one submitted by the socialist countries—prohibition of all new types of weapons of mass destruction and active steps to be taken by the First Committee to draw up a relevant convention. Moreover, the draft proposed by the Western countries limited the prohibition of weapons based on new scientific principles and achievements. In effect, this meant that the ban would not cover those types of weapons of mass destruction which could be developed on the basis of existing technological principles that had not yet been applied.

At the Thirty-Third General Assembly, the Soviet and British delegations attempted to come to terms on the relevant wording. However, Britain rejected the need for a comprehensive convention. As a result, the General Assembly adopted two drafts.

Opponents of a comprehensive ban on all new types and systems of mass destruction weapons should recall the Agreed Declaration signed in 1945 by U.S. President Harry Truman, British Prime Minister Clement Attlee and Canadian Prime Minister Mckenzie King, which declared, in part: "We are aware that the only complete protection for the civilized world from the destructive use of scientific knowledge lies in the prevention of war. ... Nor can we ignore the possibility of the development of other weapons, or of new methods of warfare, which may constitute as great a threat to civilization as the military use of atomic energy."[1] Today, however, it is obvious that the governments of the United States and other NATO members prefer not to remember this declaration.

Prepared to conclude partial agreements, as well as a comprehensive one, the Soviet Union conducted negotiations with the United States from May 1977 to July 1979 on prohibiting radiological weapons, as a result of which agreement on a mutually acceptable text was finally reached.

In a letter to the First Committee entitled "On Negotiations Concerning the Prohibition of New Types of Weapons and New Systems of Such Weapons",[2] the Soviet representative stated that the threat inherent in radiological weapons is based on the fundamental possibility of using radioactive materials to destroy, inflict loss or cause damage with radia-

[1] *The Department of State Bulletin*, Vol. XIII, No. 334, 18 November 1945, p. 781.

[2] See: CD/35, 10 July 1979, p. 3.

tion resulting from the radioactive decay of such materials.

The ionizing radiation resulting from the radioactive decay of such materials destroys biological structures in living organisms. Consequently, there are reasons to believe that the action of radiological weapons, if they are ever developed, will be similar to the action of radioactive materials created in a nuclear blast that account for radioactive contamination. The possibility that radiological weapons will be developed is increased by the rapid advance of nuclear science and industry in many countries. This creates objective conditions for extensive proliferation of radioactive materials and heightens the potential threat of their use in developing such weapons. Therefore, it is important to ban this non-explosive weapon before it is created.

On 9 July 1979, the Soviet Union and the United States submitted to the Disarmament Committee (at present, the Disarmament Conference[1]), the agreed text of their joint proposal.[2] This document binds the parties to refrain from developing, manufacturing, stockpiling, acquiring by any means, possessing, or using radiological weapons. Radiological weapons are defined in the document as any technical means including any weapon or equipment, not constituting a nuclear explosive device, especially designed for using radioactive material by means of its dissemination for the purpose of destruction, inflicting loss or causing damage by radioactive radiation resulting from the decay of such material, and also any radioactive material (not produced by a nuclear explosive device) specially designed for use by means of its dissemination for the purpose of destruction, inflicting loss or causing damage by radioactive radiation resulting from the decay of such material.

The next important provision of the agreed proposals is the obligation to refrain from intentional use of any radioactive material not defined as a radiological weapon and not produced by a nuclear explosive device, by means of its dissemination with the purpose of destruction, inflicting loss or causing damage by radioactive radiation resulting from the decay of such material.

The draft also envisages the obligation not to aid, encourage or induce any person, State, group of States, or international organization to conduct any activity that the parties to the

[1] As of 7 February 1984.
[2] See: CD/32, 9 July 1979.

agreement undertake to refrain from. At the same time, the use of radioactive radiation resulting from radioactive decay for peaceful purposes is not in any way restricted.

Every party to such an agreement would be obliged to take all necessary measures, in conformity with its constitutional procedures, to prevent the loss of radioactive materials that could be used in developing a radiological weapon, to prohibit and prevent the use of such materials for developing such a weapon, and also any activity incompatible with the provisions of the agreement either on its own territory or in any other location under its jurisdiction or control.

Another provision notes the complementary character of the agreement, since nothing in it must be interpreted as limiting or belittling in any way the commitments assumed by any State under the Treaty on the Non-Proliferation of Nuclear Weapons, the 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, or any other rules of international law regulating military operations in an armed conflict. The draft also provides for an international verification mechanism. This includes setting up an Advisory Committee of experts which would examine any questions and complaints about breaches of the agreement. The Committee must draw up and hand over to the depository States a document summing up the facts and circumstances of any violation, including all the different viewpoints and information communicated to the committee. The document must then be distributed among all the signatory States. In addition, a signatory State is entitled to lodge a complaint with the UN Security Council, which then itself conducts an inquiry in conformity with the UN Charter. The signatory States are obliged to cooperate with the Security Council in conducting the inquiry, while the Security Council must inform them of its results. Moreover, the member States must render assistance, in conformity with the UN Charter, to the member State which has sustained damage or is expected to sustain damage, as a result of the violation. It was proposed that the agreement should be of unlimited duration, with the possibility of reviewing it after ten years or earlier at the request of the majority of member States. A member State can secede from the agreement in extraordinary circumstances that can prejudice its higher interests. It should be borne in mind that the Soviet Union's position is based on the definition of weapons of mass destruction made in 1948, with which, although it is not very precise, most

member States have already agreed. This lays the ground for a comprehensive agreement banning the development and production of new types and systems of weapons of mass destruction, and also for the possibility of concluding specific agreements on new types of such weapons. It is to be regretted that the conclusion of this international agreement is being delayed, partly because there is some thinking in the First Committee that the prohibition of radiological weapons is not so important as the prohibition of nuclear and chemical weapons. We cannot agree with this opinion.

At present, more than fifty states possess nuclear reactors and can therefore produce radioactive materials for military purposes. According to the Energy Research and Development Administration (USA), by the year 2000 about a hundred countries will have the capability to manufacture nuclear weapons.[1] The delivery systems, including cruise missiles, are also being constantly developed. Increasingly sophisticated air bombs, missile warheads, artillery shells, projectiles, and sprayers, raise the effectiveness of military use of radioactive agents. According to reports in the U.S. press, a 200-kilogramme radiological air bomb detonated at an altitude of 300 to 400 metres contaminates an area within a 300-kilometre radius. Ten cruise missiles disseminate one ton of radioactive material and contaminate an area of 100 square kilometres. All this demonstrates the real danger of the use of such weapons in future.

Still high on the agenda is the need to start negotiations on banning neutron weapons, which are in many respects similar to radiological weapons. Experts warn that the radiation resulting from a neutron bomb blast kills all living beings over a very large area.

Considering the growing threat of neutron weapons to all life on earth, on 9 March 1978, the Soviet Union and other socialist States submitted to the First Committee a draft convention banning the manufacture, stockpiling, deployment and use of neutron weapons. This was done at a time when the USA had announced plans to manufacture neutron weapons and deploy them in Europe, the peoples of which had vigorously opposed such plans. The principal provision of the draft convention stated that each contracting party would undertake not to manufacture, stockpile, deploy, or use neutron weapons. According to the draft, verification of the terms of the convention would be conducted by national bodies in conformity with

[1] *The Nation*, New York, April 4, 1981, p. 389.

international law, and also in the form of consultations and by means of appropriate international procedures within the UN, and not least of all with the help of the Security Council's investigatory potential.

Speaking before the First Committee, the delegations from the socialist countries presented the following arguments in favour of banning neutron weapons: neutron weapons are especially barbarous offensive weapons of mass annihilation, which have indiscriminate effects; their deployment in Europe would contradict the Helsinki Final Act and would constitute an obstacle to disarmament negotiations; the use of neutron weapons would cause persistent radioactive fall-out, and therefore the neutron bomb is not a clean weapon; its deployment in Europe would lower the nuclear threshold; its development and deployment in Europe would incur reciprocal action from the socialist community, thus escalating the arms race to more dangerous levels; finally, its deployment in Europe would destabilize the current correlation of forces there and hinder disarmament talks.

In the early 1950s, the Lawrence Livermore National Laboratory in the United States developed the first neutron bomb, which was tested in Nevada in the spring of 1953.

In April 1976, President Ford sanctioned the production of neutron warheads for the Lance missile. In June 1977 President Carter wrote to the Chairman of the Senate Armed Services Committee that the development of such a weapon would serve the interests of U.S. national security.

Rising public protests delayed the beginning of the production of neutron weapons. However, despite official announcements, the U.S. Government did not abandon its plans, and in February 1980 concrete steps to deploy such weapons in West Germany were revealed.

Neutron munitions can be delivered by Lance missiles and 203-mm howitzers. At present, Lance warheads are equipped with conventional explosives, while the neutron components remain in the United States. However, it does not take long to fit the neutron components onto the conventional warheads, and they can be delivered within 72 hours in one plane to Ramstein, the U.S. Air Force headquarters in West Germany. Thus, it is obvious that the declared decision not to use neutron weapons does not at all mean the abandonment of production of its components.

Early in 1981, France announced that it possessed the neutron weapon and that appropriate research had been going

on since 1976. The newspaper *L'Humanité* noted this meant that France was relinquishing its strategy of deterrence and was transforming its armed forces into forces of aggression.

On 6 August 1981, President Reagan announced plans to launch production of components for a neutron bomb. On the same day in 1945, the first atom bombs were dropped on Hiroshima and Nagasaki. The memory of the victims demands that those responsible be brought to justice.

Thousands of people took to the streets all over the world to protest against this new sinister weapon. Their indignation is hardly surprising: the U.S. Government is deliberately trying to erase the distinctions between nuclear and conventional war, thus bringing closer the threat of nuclear war, especially in Europe.

The USA's decision to start production of the neutron bomb is closely connected with President Carter's notorious Directive 59 on the possibility of and preparation for a limited nuclear war, which could ostensibly be waged both in Europe and the Middle East, and which, supposedly, should not be regarded as anything extraordinary since it will not wipe out all of mankind. This attitude flies in the face of international legality. The neutron bomb is intrinsically a first-strike weapon and as such cannot be considered lawful. Besides, the US government's claims that this decision is a purely domestic one cannot be taken seriously, since there is an agreement between the United States and Great Britain on the standardization of weapons and on the deployment of the British Rhine Army in West Germany and of U.S. troops in Europe, South Korea and Japan. The United States is capable of airlifting neutron warheads for Lance missiles and 8-inch neutron projectiles to other countries within 3 to 4 hours. There have even been reports in the press that the United States negotiated with Great Britain, South Korea and Japan the possibility of deploying neutron weapons in those countries.

As far as West Germany is concerned, under existing treaties, the United States does not even need to ask that country's permission to deploy its weapons there. Consequently, such deployment would involve all these countries in the theatre of war in the event of a military conflict.

The first to protest against neutron weapons were the people of Europe. In November 1977, the Dutch national Stop the Neutron Bomb forum declared: "The neutron bomb is the most dangerous of all the weapons developed and used up to this point. It is primarily directed against human beings." The Dutch

Government was the first in Western Europe to say no to deployment of neutron weapons on its soil. The next to officially oppose the production of neutron weapons was the Government of Norway. All progressive national and international non-governmental organizations joined the campaign on a worldwide scale.

The neutron bomb is a first-strike weapon, since its purpose is "to clear of enemy personnel" the towns and villages in the zone of invasion and also in the enemy rear prior to air landing operations. Conversely, if the weapon were to be used in defence, it would hit one's own population. These characteristics expose the NATO generals' claims of the peaceful nature of the neutron bomb as outright lies and leave no doubt about the danger of this weapon, whose use would entail the employment of other types of nuclear weapons and, consequently, lead to a global nuclear war. Moreover, neutron weapons cause serious long-term damage to the environment. This is banned by the 1976 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques and the 1977 Protocol Additional to the Geneva Conventions of 1949 and Relating to the Protection of Victims of International Armed Conflicts.

One of the most terrifying features of the neutron bomb is its genetic effect. Having examined the question of the negative consequences of the use of the neutron bomb, many scientists warn that the period of time during which a nuclear weapon can cripple a person is unlimited, and even several generations after the nuclear blast, disfigured children will be born. The use of nuclear weapons in Europe, Prof. Edwards believes, would leave many more people wounded than killed compared with the use of even the most powerful conventional weapons, although the symptoms of such wounds would in most cases become evident much later.

As early as 1981, the Pentagon was already planning to produce 380 Lance missiles with neutron warheads and some 800 projectiles for 8 inch howitzers. In the event of a nuclear war in Europe, this amount would suffice to kill off almost the entire population there and cause long-term damage to the environment.

The Pentagon's decision was made in pursuance of the NATO Council decision to deploy 600 U.S. missiles in Europe to achieve military superiority over the Warsaw Treaty countries. This complicated even more the examination of the arms limitation issue. Blinded by the misconception that dialogue can be

conducted with the Soviet Union only from positions of strength, the U.S. Government and a number of its NATO allies are demanding unilateral concessions from the USSR. This contradicts such universally recognized principles of international law as equal security and respect for the security of all States. The argument that neutron weapons are necessary to offset Soviet tank superiority cannot be taken seriously, either, since West Germany now has 100,000 units of a new anti-tank weapon, and other NATO members have 200,000 more.

The Soviet Union's response to NATO's reckless policy is to propose total prohibition of neutron weapons.

The USSR suggests that a treaty be concluded banning the production, stockpiling, deployment and use of neutron weapons—a treaty that would be based on the principles of equal security, reciprocity, universality and concreteness. This would make it possible to mobilize all people of good will to translate such a treaty into reality in the interests of all nations.

The world public firmly opposes the use of neutron weapons. The UN General Assembly Special Session on Disarmament raised the question of its prohibition and received extensive support from many countries. At the Thirty-Fourth Session of the UN General Assembly, the Soviet delegation stressed that neutron weapons must be banned once and for all, but that if the West refused to do so, the Soviet Armed Forces would have a reliable counterweapon.

All this demonstrates once again the serious threat posed by the production and proliferation of new types of weapons of mass annihilation. Therefore, only a constructive approach of all sides in the negotiations and full utilization of the entire mechanism of international negotiations can yield practical results in this field.

* * *

In flagrant violation of international humanitarian law, the United States has started a new spiral of the conventional arms race, and is attempting to spread the arms race to outer space. U.S. strategists regard conventional weapons as an integral component of a nuclear war, in which both conventional and nuclear weapons will be used in a first strike. This idea is reflected in the Airland Battle Doctrine proposed by Gen. Bernard Rogers, Supreme Allied Commander, Europe. The doctrine draws no distinction between the first strike and retalia-

tion. Moreover, it provides for the use, at the very outset of the war, of all types of weapons of mass destruction at the Pentagon's disposal, i.e., conventional, nuclear, chemical and bacteriological, in an attempt to carry out a surprise attack in a so-called preemptive war, in which the United States would have an advantage, since the "enemy" would be caught unawares.

The Airland Battle Doctrine does not limit the war to any particular region, although, according to E. Meyer, former Chief of Staff for Operations and Plans of the U.S. Armed Forces in Europe, there is no doubt that the most important war for the survival of the United States would be the war in Europe.[1]

In December 1983, Gen. Rogers urged all NATO countries to make the necessary sacrifices to reach the planned level of conventional forces and armaments. In March 1984, U.S. Secretary of Defence Caspar Weinberger again called on NATO to intensify military preparations, stating that the Atlantic Alliance had to maintain its maximum capability in Europe and also maximum forces to strengthen this capability. He demanded that the West European allies increase military expenditure even more, above all so as to build up NATO's conventional capability. It can be said that the Rogers Doctrine was a new modification of the USA's NATO doctrine in Europe.

The National Defence Guidelines for 1984-1988 set before the U.S. conventional armed forces the goal of being capable of threatening Soviet interests, including USSR territory, and of conducting offensive operations against Warsaw Treaty Member States.

This policy proclaimed by the U.S. Government means not only a qualitative build-up of conventional armaments, but also the development, introduction and use of such types of weapons that would not differ from nuclear weapons in their effect. Thus, on the one hand, we witness the gradual lowering of the nuclear threshold through the miniaturization of nuclear weapons, and on the other, the growing destructive power of conventional weapons. The United States has already tested a number of new weapons in Lebanon, not least of all, with the assistance of Israel. This has resulted in the highest number of civilian casualties in the entire history of wars. The new weapons include the phosphorus bomb, the vacuum bomb, the new 155-mm marine howitzer with new ammunition and

[1] N. Paech, *Grundgesetz Kontra Raketen*, Köln, 1983, S. 9.

an increased range of fire of up to 69 miles, the modified CH-53 helicopter (carrying capacity: 16 tons), and the portable Stinger missile. The U.S.-Israeli aggression in Lebanon left 200,000 killed, hundreds of thousands wounded, thousands of homes destroyed, and hundreds of thousands of civilians homeless.

Year after year, the U.S. budget provides for a sharp increase in defence spending. In 1985, for instance, $2,000,000,000 were allocated for developing laser weapons as well as conventional anti-missile weapons.

At present the world spends about $2,000,000,000 on armaments per day; 40 per cent of all scientists are engaged in military research. But it is the ordinary working people who have to bear the brunt of these colossal military expenditures.

The Soviet Union and other socialist countries have on numerous occasions proposed reduction of military spending. In 1973, the USSR submitted to the General Assembly a proposal to cut by 10 per cent the military budgets of the permanent members of the Security Council and to spend part of this money on aid to the developing Third World countries. However, the West did not accept this proposal. In January 1983 and in 1984, the Warsaw Treaty Member States proposed that negotiations be immediately started between NATO and the Warsaw Treaty to reach an agreement on freezing military expenditures, to be followed by their reduction, either in percentages or in absolute terms. However, to his day there has been no reply from NATO.

One of the arguments in favour of the arms race that can be heard in the West today is that it provides jobs. This is not true. According to U.S. sources, in 1970-1974, allocations for the military industries made an average of 967,000 Americans per year unemployed; in the late 1970s 1,440,000 jobs were lost, and in 1982 the figure was 2,000,000. For the 1984/85 fiscal year, the Pentagon demanded more than $313,000,000,000. Research carried out by U.S. scientist, Ruth L. Sivard, shows that a 5-per-cent reduction of military spending by all States would yield an extra $15,000,000,000 per annum. This money would be enough: to provide adequate food to 200,000,000 children; increase agricultural output in the developing countries, where 400,000,000 people are on the verge of starvation; build new primary schools to accommodate an extra 100,000,000 children; render immediate aid to countries suffering from natural calamities; carry out an international disease-prevention programme; wipe out illiteracy among 25,000,000 adults in the developing countries; mount a worldwide campaign to eradi-

cate malaria; build up the health of 300,000,000 women and children by adding preparations containing iron to their food; supply much-needed vitamins to 100,000,000 children aged one to five and threatened with blindness.

In the struggle to curb the arms race, a regional approach might be the most effective, above all in negotiations on limiting and reducing armaments and armed forces in Europe. However, the United States and other NATO countries refuse to take any constructive steps in this area. Under the pretext of countering "the Soviet military threat," NATO is constantly building up its armed forces. The West continually accuses the Soviet Union of possessing military superiority—specifically, in tanks and ground forces, using this as a pretext to demand unilateral concessions from the USSR. Addressing the Thirty-Sixth General Assembly, the head of the Soviet delegation, A. A. Gromyko stated: "The Soviet Union is not doing anything over and above what is absolutely essential to ensure the peaceful life of its people and the security of its friends and allies. We believe that the ruling quarters of NATO are perfectly aware of this. Yet they do not wish to acknowledge that there is no Soviet threat and refuse to part with deception. To do this, they operate with categories that cannot be compared and falsify the figures on strategic armaments, medium-range nuclear missiles in Europe, armament levels of both sides in Central Europe, or some other aspect of the correlation of forces."

On behalf of the delegations of the socialist countries, in June 1983, the Soviet Union submitted a new comprehensive Draft Agreement on the Mutual Reduction of Armed Forces and Armaments and Associated Measures in Central Europe. The proposal was based on one made by the 1980 Meeting of the Political Consultative Committee of the Warsaw Treaty Member States, in respect to concluding an agreement banning the use of nuclear and conventional weapons against non-nuclear States in Europe. That same year, the Warsaw Treaty countries submitted a proposal on concluding an agreement on the mutual non-use of military force and on the maintenance of peaceful relations.

Of extreme danger to the whole world is the spread of the arms race to new spheres, above all, to outer space where the Pentagon plans to deploy new types of weapons, including orbiting stations equipped with lasers and other directed-energy weapons. In order to prevent outer space from becoming a new arena for the arms race and a source of increased international tensions, in 1981 the Soviet Union proposed a

Treaty on the Prohibition of the Stationing of Weapons of Any Kind in Outer Space. In 1983, the USSR proposed a Draft Treaty on the Prohibiting of the Use of Force in Outer Space and from Outer Space in Respect of the Earth, in line with the proposal submitted by the Soviet Union at the UN in 1958 on banning the use of outer space for military purposes.

On 12 December 1984, on the Soviet Union's initiative, the Thirty-Ninth General Assembly adopted Resolution 39/59 "Prevention of an Arms Race in Outer Space", which states, in part: *The General Assembly*, (1) *Recalls* the obligation of all States to refrain from the threat or use of force in their space activities; (2) *Reaffirms* that general and complete disarmament under effective international control warrants that outer space shall be used exclusively for peaceful purposes and that it shall not become an arena for an arms race; ... (5) *Reiterates* that the Conference on Disarmament, as the single multilateral disarmament negotiating forum, has the primary role in the negotiation of a multilateral agreement or agreements, as appropriate, on the prevention of an arms race in all its aspects in outer space..."

The Soviet Union's response to the U.S. Strategic Defence Initiative was the proposal to impose a total ban on the militarization of outer space and on the use of any weapons in space or from space against the earth.

Actually, the Strategic Defence Initiative (SDI) is not a defence initiative at all, but rather a programme to secure the impunity of a U.S. first nuclear strike. Moreover, SDI, also known as the Star Wars programme, not only gives a new impulse to the arms race involving all the existing types of weapons, but it will put an end to any restriction of the arms race.

If ever an agreement is reached on banning an arms race in space, the Soviet Union would be ready for radical cuts in nuclear weapons: specifically, mutual 50 per cent reductions at the first stage, to be later followed by more cuts involving other nuclear nations.

The U.S. side does not wish to admit that SDI is, in effect, a deployment of weapons in space. In contrast, the Soviet approach is based on the principle of non-deployment of any weapons in outer space and total compliance with its international obligations, above all the ABM Treaty of 1972. This is confirmed by the USSR's proposals made in 1985. For example, the USSR proposed a moratorium on the development, research, testing and deployment of nuclear space weapons, including

components of a space-based ABM system, for the entire period of the Soviet-U.S. negotiations in Geneva.

The new Soviet proposals on radical 50-per-cent cuts in U.S. and Soviet nuclear missiles capable of reaching each other's territory, provided there is non-militarization of outer space, is closely connected with observance of the ABM treaty.

Naturally, confidence between the United States and Soviet Union would be strengthened if the two countries reiterated their commitment to the 1972 Treaty on the Limitation of Anti-Ballistic Missile Systems.

Scrapping SDI is the only way to achieve success in the talks on the reduction and elimination of weapons of mass destruction. It is the only way to strengthen and develop international legality and promote the principles and standards of international humanitarian law.

An important role in combatting the arms race in conventional weapons is played by the prohibition or restriction of the arms trade. U.S. arms sales to dictatorial and racist regimes destabilize the international situation, forcing the neighbouring developing countries to channel tremendous resources into armaments at the expense of development. They aid in aggression, annexation of neighbouring territories and repressive policies within those countries (such is the effect of arms supplies to Israel, Pakistan, South Africa, El Salvador, Guatemala, Honduras, and many other dictatorships). The same policy is pursued by Great Britain, Italy, West Germany, France, and Israel itself.

In order to prevent the proliferation of new types of conventional weapons and thus reduce international tensions and keep the developing countries from being drawn into the arms race, the Soviet Union proposed to the United States to start talks on limiting the arms trade. In tackling this problem, it is necessary first of all to take the system of principles embodied in the UN Charter as the basis of international conduct and, proceeding from this, to prevent arms supplies to certain countries. It should be recognized as inadmissible to supply arms to a State whose actions fall under the 1974 definition of aggression; a State that violates the borders of another State from its own territory or from the territory of a third State; to a State that commits flagrant, systematic and mass violations of human rights and fundamental freedoms. At the same time, it is not only permitted but actually necessary to supply arms to victims of aggression exercizing their legitimate right to self-defence. Equally legitimate is military

aid to States and nations fighting against foreign aggression and against colonial and racist regimes. All these principles are universally recognized and embodied in UN resolutions. But the United States, having started negotiations with the Soviet Union on limiting the arms trade, in 1978 abandoned them.

The arms race can also be curbed by regional agreements on the non-receipt of certain types of weapons and restrictions on import of conventional arms. The international arms trade can be limited by restraining demand, that is to say, self-restraint on the part of the recipients. For example, the American scientist Jacque Huntzinger writes: "The regional approach to limiting arms imports of the Third World has the best prospects for the future for the one essential reason that the proliferation of conventional weapons in closely linked to elements of regional security."[1]

Qualitative self-restraint in importing conventional weapons is feasible in countries that do not possess large stockpiles of modern weapons, do not have large armed forces, and where political tensions, if any, are not high.

In 1974, eight Latin American countries signed the Declaration of Ajacucho, which proclaims the general principles of a multilateral agreement limiting conventional weapons in that region. In 1978, a conference was convened in Mexico on problems of conventional arms limitation in the region. At the First Special Session of the UN General Assembly on Disarmament, Venezuela, Mexico, Ecuador, Panama and Colombia expressed grave concern about the growing arms trade in the region and stressed the need for a comprehensive programme of stage-by-stage disarmament.

A verbal note issued by the Foreign Ministers of Argentina, Bolivia, Venezuela, Colombia, and several other Latin American countries was circulated as an official UN document confirming the principles of limiting conventional armaments.

In September 1980, the representatives of Colombia, Costa Rica, Ecuador, Panama, Peru and Venezuela adopted a Charter on the Peaceful Settlement of Disputes, in which they committed themselves to carrying out the principles of the Declaration of Ajacucho.[2]

Similar self-restraint is possible in regions with large weapon

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[1] *Controlling Future Arms Trade, 1980's Project*, Council on Foreign Relations, New York, 1977, p. 171.

[2] *World Armament and Disarmament: SIPRI Yearbook 1982*, London, 1982, pp. 420-422.

stockpiles and also in regions that are in the grip of armed conflict. Possible measures could include exchange of information on arms purchases by the belligerents and the setting of a quantitative ceiling on such purchases. The regional approach could undoubtedly form the foundation of an agreement between States in a certain region. Such an agreement must be based on generally recognized principles of international law, on the scrupulous observance of the principle of reciprocity and non-infliction of damage to the security of any country in the region, and must embrace all the countries in the region. These measures could curb the conventional arms race and make it possible, especially for the young developing countries, to concentrate all efforts on solving the most urgent problems of development.

* * *

The examination of issues relating to arms prohibition reveals the growing interrelation between weapons of mass destruction and conventional weapons. This interrelation was pointed out at a session of the Disarmament Committee back in 1981. The participants emphasized the growing importance of limiting conventional weapons and concluded that all nuclear disarmament measures should be accompanied by similar measures in relation to conventional weapons. The development of conventional weapons results in enhanced strike accuracy and greatly increases the affected area, turning such weapons into weapons of mass destruction.

The need for a comprehensive approach is also dictated by the position of the United States, which has sharply stepped up the conventional arms race. In addition to the existing U.S. nuclear first-strike capability and the transfer of the arms race into outer space, there is now the possibility of unleashing a "low-intensity" conflict with the use of non-nuclear weapons. But the problem is that a local armed conflict could escalate into a tactical nuclear war, then into a "limited" strategic nuclear war and, finally, into a global nuclear war. Mankind will never be tempted to embark on this road of self-annihilation.

Chapter IV

Ways and Means of Raising the Effectiveness of International Humanitarian Law

§ 1. Security Guarantees

At present, international relations are going through a difficult and contradictory stage of development, and today's political realities make it imperative that politicians draw their own conclusions from the objective processes taking place in the world.

The prohibition or restriction of the use of certain types of weapons is closely associated with the process of safeguarding the security of States and working out a system of guarantees of such security, with priority given to international legal guarantees.

An important factor in the development of security guarantees is the approximate parity of armaments and armed forces between NATO and the Warsaw Treaty members. In particular, this implies the need for negotiating an agreement on the limitation and gradual reduction of armaments and armed forces and guarantees of security based on the principles of equality and equal security and restraint from jeopardising the security of any of the signatories.

The policies pursued by the socialist countries also affect this process, since socialism rejects war as a rational method in politics. The humane essence of socialist society is expressed in the policy of providing favourable international conditions for national, social, economic and political progress and the exercise of fundamental rights and freedoms by each and every human being.

The new conditions under which international relations develop today are influencing the whole world, including the political thinking of many prominent figures in the ruling quarters of capitalist countries.

It should be recalled that the US Senate refused to approve the Administration's plans for direct military intervention in Angola.

Former State Secretary Cyrus Vance admitted on May 3, 1979, that the U.S. military potential could not ensure a satisfactory solution of purely domestic problems of other countries, while the use of military force was not and should not be a desirable reaction of U.S. foreign policy to the domestic policies of other countries.

And yet the ruling quarters of the United States embarked on the road of stepping up the arms race, using force in international relations, and refusing to abide by international law. In 1983, for instance, U.S. armed forces overran the tiny island State of Grenada, trampling underfoot the rights and freedoms of the Grenadian people.

This approach calls in question the efficacy of any international agreements and, indeed, makes their conclusion virtually impossible. Yet the need to preserve peace in the world is becoming an objective need of the development of international relations, which is expressed in the concept of international security. This concept reflects both the technological revolution in armaments and the emergence of global problems of mankind's development. In the context of recent technological advances, the doctrine of national security based on the development and stockpiling of weapons in one country or within an alliance of countries becomes senseless, since another State or group of States can do the same. In the event of armed conflict, the question is no longer who wins and who loses, but rather how many times over the belligerents can destroy each other. It is obvious, therefore, that the arms race cannot give anyone military superiority. National security can be safeguarded only together with international security based on the principle of equality and equal security, with the setting up of a system of international treaties banning or restricting the use of specific types of weapons, curbing the arms race, and promoting disarmament with a view to the ultimate elimination of all types of weapons under adequate international control.

In the context of international security, the global problems that face mankind today and determine its future can also be solved. The need for international security brings calls for the elaboration of its political and international legal guarantees. The latter take shape as a result of both bilateral negotiations and international conferences.

The political guarantees of international security include, above all, a range of actions by individual States and international organizations aimed at creating a climate of mutual trust,

which determines the optimal ways and means of resolving international issues on the basis of equality and equal security. These actions must, as a rule, lead to the drawing up and adoption of international legal guarantees based on mutual obligations binding on all parties, in the form of international agreements, mandatory decisions made by international organizations, etc.

At present, one important line of endeavour in creating a climate of trust and political guarantees is the drawing up and adoption of resolutions by the General Assembly determining the guidelines of cooperation between States in promoting peace and disarmament. As a rule, such resolutions become the foundation for international agreements of a binding nature, which reinforces existing political guarantees with international legal guarantees.

General Assembly resolutions can be roughly divided into those directly concerned with matters of banning or limiting the use of certain types of weapons, those dealing with questions of disarmament, and those devoted to general questions of détente and creation of a climate of trust between nations.

The use of the UN machinery, in particular the General Assembly, is an effective stimulus in establishing political and international legal guarantees of international security.

Of fundamental importance in this respect is the resolution "Regulation, Limitation and Balanced Reduction of All Armed Forces and All Armaments" (Report of the Disarmament Commission). This resolution stresses the urgent need to reach agreement as soon as possible on a broad and coordinated plan for the regulation, limitation and reduction, under international control, of all armaments and armed forces, withdrawal and prohibition of atomic, hydrogen, bacteriological, chemical and all other weapons used in warfare for mass destruction, and also regarding the accomplishment of these aims through effective measures.

Resolution 2444 (XXIII) calls on all sides to respect human rights during armed conflicts and formulates the basic principles of restricting the use of certain types of weapons in armed conflicts. The same ideas are expressed in Resolutions 2852 (XXVI), 2853 (XXVI), and 3032 (XXVII). Of great importance is General Assembly Resolution 2936 (XXVII) "Non-Use of Force in International Relations and Permanent Prohibition of the Use of Nuclear Weapons", in which the international community reaffirms its renunciation of force and declares that the use of nuclear weapons is banned for all time. The

resolution urges the Security Council to urgently take appropriate measures to implement this General Assembly declaration.

One could cite a number of General Assembly resolutions which have provided a foundation for elaborating concrete international obligations regarding the prohibition or restriction of the use of certain types of weapons. These include Resolution 3264 (XXIX) "Prohibition of Action to Influence the Environment and Climate for Military and Other Purposes Incompatible with the Maintenance of International Security, Human Well-Being and Health", Resolution 3478 (XXX) and Resolution 3479 (XXX) and 31/74"Prohibition of the Development and Manufacture of New Types of Weapons of Mass Destruction and New Systems of Such Weapons".[1]

In 1984, the Thirty-Ninth Session of the General Assembly adopted resolutions aimed at creating a climate of trust and preventing negative actions in international relations. One such resolution was entitled "Draft Code of Offenses Against the Peace and Security of Mankind", which was aimed at promoting the goals and principles of the UN Charter. One hundred and twenty-two States expressed their deep conviction that such a code should, above all, condemn nuclear war as the gravest crime against humanity (those abstaining during the voting included the United States, its NATO allies, Japan, and Israel).

The resolution declared that 8 and 9 May 1985 would be the days of the 40th anniversary of victory over Nazism and fascism in the Second World War and of the struggle against them and the celebration of that historic event should help to "initiate or intensify measures against the ideologies and practices ... based on racial or ethnic exclusiveness or intolerance, hatred and terror". All States were called upon to take effective legal measures to ban the criminal activity of the neo-fascists.

The General Assembly also adopted a resolution calling upon the mass media to make their contribution to the strengthening of peace and international understanding and to the struggle against racism, apartheid and incitement to war. The resolution calls for the establishment of a new international informational order which would serve to strengthen peace, provide better opportunities for all to take a more active part in politi-

[1] See, also UN Doc. A/9215 (Vol. II), 7 November 1973, "Respect for Human Rights in Armed Conflicts. Existing Rules of International Law Concerning the Prohibition or Restriction of Use of Specific Weapons", Twenty-Eighth Session.

cal, economic, social, and cultural life, promote friendship and understanding among all States, and encourage respect for human rights.

Along with resolutions concerned with matters of disarmament and prohibition or restriction of the use of specific types of weapons, an important role in creating a climate of trust belongs to General Assembly resolutions mapping out general guidelines for the development of international relations—peace, disarmament, good neighbourliness, and cooperation.

These resolutions include, above all, the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, adopted by the Twenty-Fifth Session in 1970. This resolution expresses the common desire of all States to establish stable international relations based on commonly understood principles of international State relations. Proceeding from the UN Charter, the resolution proclaims the following principles of inter-State relations: all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other way incompatible with the purposes of the United Nations; all States shall settle their international disputes by peaceful means in such a way as not to jeopardize international peace, security, and justice; the principle of non-interference, in accordance with the UN Charter, in affairs under the domestic jurisdiction of any other State; the principle of cooperation among States under the UN Charter; the principle of equality and self-determination of peoples; the principle of sovereign equality of States; the principle of fulfilment in good faith of obligations assumed under the Charter.

The Declaration emphasizes that each of these principles should be seen in its relation to and in the context of all the other principles. The adoption of this Declaration has served to promote the establishment of good-neighbourly relations between States.

Adoption by the UN General Assembly of the Declaration on the Deepening and Strengthening of Detente (1977) has also greatly contributed to a climate of trust in the world. The Declaration calls upon all States to continue and increase their efforts to deepen and strengthen international détente.

Thus it can be seen that UN General Assembly resolutions play an important role not only in creating a climate of international trust and deepening détente, but also stimulate the draw-

ing up and adoption of concrete international legal obligations in the sphere of disarmament and international security.

The efforts by States to extinguish the hotbeds of war play an important part in preventing the escalation of war and providing conditions for disarmament. The Soviet Union, together with other peace-loving nations, has made many concrete proposals on resolving international conflicts and settling disputes by peaceful means.

One example is the well-known proposal on convening a Geneva Conference on the settlement of the Middle East crisis, at which all the parties concerned would work out a solution to the problem and establish a durable peace in the interests of all the peoples and States in the region.

Establishment of zones of peace and regional systems of security offers yet another possibility for creating a climate of trust, international détente and political guarantees of the prohibition or restriction of use of specific types of weapons with a view to ultimate disarmament.

The experience of establishing international legal guarantees of the zone of peace in the Antarctic under the 1959 Treaty on the Antarctic merits the broadest possible support. Under the Treaty, the Antarctic has been proclaimed a region open to scientific research for exclusively peaceful purposes. The use of all types of weapons in the region is banned.

Over the past thirty years, the Antarctic's weapon-free status has come up to everyone's expectations. The research carried out there by the Soviet Union, Poland, the United States, Japan, France, Australia, and Norway has benefitted all mankind. Exchange of meteorological information, joint research into animal and mineral resources, and man's impact on the environment are just a few of the joint endeavours in the region.

In this respect, of great importance are the already existing nuclear-free zones (for example, in Latin America) and negotiations on the establishment of such zones. In Europe, the recent decade has seen tangible progress in the creation of a climate of political guarantees. The Final Act of the Conference on Security and Cooperation in Europe has provided most favourable conditions for military détente. An arms freeze in all the countries of Europe, cuts in armaments and armed forces in Central Europe, prohibition of deployment in Europe of new systems of nuclear weapons and elimination of existing systems, fulfilment of obligations proceeding from, concretizing and developing the principle of non-use of force in the form

of a treaty on non-first use of nuclear and conventional weapons, non-expansion of existing military and political blocs in Europe and limitation of military exercises to levels of 50,000 to 60,000 troops, and, finally, adoption and broadening of confidence-building measures—all these steps would build a firm foundation for turning Europe into a continent of peace. A significant success is the adoption of the Stockholm Document on Confidence-Building Measures in Europe. Yet the expansion of confidence-building measures should be continued at the next Stockholm Conference. Specifically, the USSR intends to propose advance notification of independent airforce and navy exercises, limitation of the scale of military exercises, and confidence-building measures covering the territory of all States taking part in the European Conference. It is essential that the broadening of confidence-building measures should be followed by real cuts in armaments and armed forces in Europe. The Polish delegation came up with a proposal on such reductions, proceeding from the Budapest Appeal of the Warsaw Treaty Member States, which sets forth a detailed programme of reducing armed forces and conventional arms in Europe.

Confidence-building measures can vary greatly in form and character, but they all aim at creating a favourable atmosphere for initiating talks and finding solutions to specific issues of disarmament and provide certain political guarantees of this process. Confidence-building measures can be expressed in statements, agreements, notifications, etc. A good example is the system of measures for the peaceful settlement of disputes between States (Art. 33 of the UN Charter) adopted by a group of States within the framework of an international agreement. This system, based on the generally recognized standards and principles of contemporary international law, can create an atmosphere of trust between States, and its adoption rules out military confrontation and provides for a peaceful solution of the dispute.

Another example is the provision of the Final Act of the Conference on Security and Cooperation in Europe on mutual notification by its participants of no less than 21 days prior to the beginning of military exercises of land forces totalling over 25,000 troops in any European State and within a 250-km range of the western frontiers of the USSR within its territory. Such measures also include the voluntary invitation of observers from other countries to such military exercises. The socialist countries have proposed adding to these confidence-building measures an agreement on prior notification of major troop

movements and large-scale airforce exercises in the area of notification and large-scale naval exercises close to each other's territorial waters. They also proposed extending the area covered by confidence-building measures to include the Mediterranean.

To stimulate the elaboration of political and international legal guarantees of disarmament and national and international security, the USSR offered to extend considerably the zone of application of confidence-building measures on condition of a reciprocal extension on the part of the West. Evidently, similar measures could be introduced, with certain local adjustments, in the Far East, where are located such widely differing neighbours as the USSR, China and Japan, a region abounding in U.S. military bases.

A group of UN experts has defined the purpose of confidence-building measures as follows: "...to contribute to, reduce or, in some instances, even eliminate the causes of mistrust, fear, tensions and hostilities, all of which are significant factors in the continuation of the international arms buildup in various regions and, ultimately, also on a worldwide scale".[1]

Confidence-building measures will promote a political and psychological climate in which there will be fewer incentives for the arms race and the role of the military factor will decrease and gradually disappear altogether.

The absense of reliable information on the military activities of other States and on other matters of mutual security is one of the causes of mistrust. Therefore, confidence-building measures must be aimed, among other things, at ensuring accurate and reliable evaluation of each other's military activity and other matters of mutual security. For the same reasons, it is important to encourage regular personal contacts at all levels. This could promote the adoption of such political and military decisions that would improve the understanding of each other's problems and strengthen cooperation in matters of security. Also of great importance are measures to facilitate verification of compliance with international treaties on arms control and disarmament.

Confidence-building measures could perform the function of barriers against the use of military force in violation of existing rules of international conduct. Therein lies one of the basic characteristics of confidence-building measures—the implementation of the generally recognized principle of international

[1] UN Doc. A/36/474, 6 October 1981.

law, the principle of renunciation of the use or threat of force in accordance with the UN Charter. It is important, however, that all States which have approved these measures should uniformly comply with them.

Let us review the conditions under which it is possible and necessary to apply confidence-building measures. First, in the course of joint efforts to prevent or contain international conflicts and during the entry of peace-keeping forces into a particular area, if an agreement has been reached on this; second, after the termination of hostilities, there appears another opportunity for the implementation of confidence-building measures, and even a political statement of one's determination to examine the question at a later stage would constitute a step forward and bring closer a cease-fire agreement; third, negotiations on the limitation and reduction of armaments can offer an opportunity to apply confidence-building measures (for example, the question of "auxiliary measures" at the Vienna talks on the mutual reduction of armed forces and armaments in Central Europe). Nothing should prevent any state from including the question of confidence-building measures in the agenda of any talks on international cooperation.

Opportunities for strengthening trust can also appear in working on joint development projects, especially in border areas. Statements and declarations of intentions do not in themselves imply any obligation to implement any specific and verifiable measures, but are only a preliminary step to the implementation of confidence-building measures. But they could be supplemented and concretized by negotiations on clearly defined and feasible measures.

In giving an overall assessment of the correlation of confidence-building measures as a form of political guarantees of peace and international security, it should be emphasized that their implementation brings about the realization of generally recognized principles of international law. These principles include, above all: renunciation of the use or threat of force against the territorial integrity or political independence of any State, or any other actions incompatible with the purposes of the UN Charter; peaceful settlement of all disputes; international cooperation in solving international problems and promoting respect for human rights; equality and self-determination of nations; sovereign equality and respect for sovereign rights; fulfilment in good faith of obligations under international law.

Confidence-building measures have only recently been defined as one of the concrete means of reducing tensions between

States and strengthening international peace and security, although they have always played an important role in this. It should be mentioned that there are no specific provisions of international law which would directly apply to confidence-building measures as such. However, all existing standards of international law should apply to them in cases where States reach an agreement on such measures to assume obligations having a legal force, that is to say, within the law of international treaties. States may agree on confidence-building measures of a less binding character, obligations of a political nature, and recommendations on desirable conduct. Although non-compliance with such obligations would not incur legal responsibility, it would certainly undermine credibility and could even jeopardize the process of building up confidence.

Political obligations are very important for the confidence-building process, since they could promote the goals of international law by determining a code of conduct applicable to all. The constant and regular implementation of such political measures may give rise to practices which would ultimately convince all member States that only conduct conforming to such practices can be considered lawful. Thus all sides would recognize a certain confidence-building measure as a norm of conduct. The consistent and uniform implementation of a particular confidence-building measure over an extensive period of time could bring about the emergence of a new customary norm of international law. Thus the confidence-building process could gradually promote the shaping of new forms of international law.

Bearing in mind the desirability of a global approach to confidence-building measures and existing experience of regional and international contacts, it should be possible to codify confidence-building measures and draw up an international convention which would unite a number of basic and universally applicable obligations. The UN Secretary-General's relevant report of 1981 enumerates confidence-building measures that could be used by all States, taking into account military aspects and aspects of security: 1) publication and exchange of information on military activities and other matters related to mutual security, ... and also on matters of arms control and disarmament; 2) gradual reduction of military budgets on a mutually agreed basis, for example, in absolute or in percentage terms; 3) prior notification of major military manoeuvres under agreed criteria; prior notification of other military manoeuvres on a voluntary basis; prior notification of major military move-

ments; 4) invitation of military observers in connection with military manoeuvres; exchange of military delegations; provision of scholarships in military schools for military personnel of other States; 5) establishment of consultative mechanisms to promote implementation of arms control and disarmament agreements; 6) provision of information on the scope and extent of specific military activities such as manoeuvres and specified movements according to pre-established procedures; 7) steps conducive to easing current military tensions, particularly in situations where significant military forces confront each other; measures to strengthen the security of non-nuclear-weapon States; 8) limitations or exclusion of certain military activities; establishing nuclear-weapon-free zones, demilitarized zones, zones of peace and cooperation on the basis of arrangements freely arrived at among the States concerned; 9) continued and enhanced elaboration of procedures for verification as an integral part of confidence-building measures and arms control and disarmament agreements; 10) establishment of procedures for improving communication and for the reduction of misunderstandings, as well as the containment of conflicts, including the establishment of "hot lines"; disengagement and separation of forces; peace-keeping measures, such as the establishment of observation posts; 11) steps conducive to the relaxation of tensions and the settlement of conflicts.

This list cannot, of course, be considered exhaustive, but it is at least a package of measures upon which all States can come to terms.

Special attention should be devoted to confidence-building measures primarily associated with political, economic and social matters. Governments from various regions have stressed in their replies to the Secretary-General[1] the urgent need for measures whose implementation in international relations would greatly contribute to confidence-building: a) respecting the sovereignty, independence and territorial integrity of all States, and non-interference in their internal affairs, having regard to the inherent right of States to individual and collective self-defence, in accordance with Article 51 of the United Nations Charter; b) terminating policies of aggression and colonialism; c) respecting human rights and fundamental freedoms in accordance with existing international instruments; d) making use of the United Nations and other appropriate fora for the continuing consideration and promotion of confidence-building measures;

[1] UN Doc. A/36/474, pp. 44, 46.

e) establishing a new international economic order, including international cooperation and integration for economic and social development; f) respecting the sovereignty of States over their natural resources; g) undertaking joint economic development projects, especially in border areas; h) elaborating bilateral or regional agreements on projects for cooperation and integration; i) using qualified personnel and resources in joint cooperation projects in the field of development and of a humanitarian nature; help in case of natural disasters.

An important role in this belongs to the United Nations, which can encourage member States to consider negotiations on confidence-building measures and to enter such negotiations, and can promote the establishment of a political climate conducive to the success of such negotiations. The report submitted by UN experts states: "While many confidence-building measures can further specific goals of the United Nations, the Organization, for its part, can encourage and improve the functioning of confidence-building measures. In doing this, it can, in an exemplary way, discharge its task of being the centre for harmonizing the actions of nations".[1]

The Security Council can also promote peace initiatives and measures to terminate armed conflicts whenever they occur. Good examples of time-tested confidence-building measures are UN peace-keeping operations and the sending of peace-keeping forces, observers and mediators.

Such UN bodies as the General Assembly, its subsidiary body, the Disarmament Commission, the Disarmament Conference, the UN Secretary-General, and all the specialized agencies of the United Nations, can contribute to the elaboration of confidence-building measures.

Given the delivery speed and explosive yield of modern weapons, the atmosphere of mutual suspicion is especially dangerous. Even an accident, a miscalculation, or a technical fault can have tragic consequences. It is, therefore, important to establish reliable safeguards against the accidental use of weapons. Certain measures in this area have already been taken, specifically as part of the Helsinki Accord. But the Soviet Union proposes more radical measures, and it has tabled relevant proposals at the Soviet-U.S. talks in Geneva on the limitation and reduction of nuclear armaments.

The USSR is also ready to consider proposals in this field tabled by any other State.

[1] UN Doc. A/36/474, p. 41.

The atmosphere of mutual suspicion cannot be dispelled without a normalization of the political situation in the world and renunciation of the advocacy of hatred and propaganda of nuclear war. And, naturally, the main road to trust and to the prevention of any war, including an accidental war, is to stop the arms race and return to normal, correct relations between States, return to détente.

This has been demonstrated by the USSR's active stand at the Stockholm Conference on Confidence and Security-Building Measures and Disarmament in Europe, where the Soviet Union and other socialist countries proposed that nuclear States should assume an obligation not to make first use of nuclear weapons and that the Warsaw Treaty and NATO Member States should commit themselves not to be the first to use either nuclear or conventional weapons, that is, to renounce the use of force against each other altogether.

Present-day international practice attaches great importance to confidence-building measures as a catalyst of international détente capable of providing favourable conditions for reaching an agreement on substantive measures to reduce armaments and bring about disarmament, including the reduction, limitation or prohibition of the use of conventional arms.

The drafting and implementation of political guarantees through the mechanism of the United Nations, specialized international conferences, and bilateral negotiations is now supplemented by the drawing up and adoption of international legal guarantees that impose concrete obligations on States, the implementation of which would lead to tangible arms reduction and disarmament. Political guarantees enable States to express their will in the form of international legal acts, treaties and agreements.

International legal guarantees of the security of States are both proscriptive in nature and stimulate the development of friendly relations and cooperation between States.

The development of international relations and international law has conditioned the appearance of a number of proscriptive rules that impose certain obligations on States in international conduct. This has come as a result of continued efforts on the part of many nations and States to establish an international legal order and to maintain peace and peaceful coexistence between States regardless of socio-economic differences.

Throughout the entire period of history before 1917, war was considered to be a perfectly legitimate means of settling international disputes. In the 1920s, under the impact of the

noble ideas of the Great October Socialist Revolution in Russia, there emerged in international law the principle of prohibition of the use or threat of force, the principle of non-aggression, and the principle of prohibition of wars of aggression.

The famous Hague Conventions, which have greatly contributed to the laws and customs of war, were an attempt to restrain States from resorting to force. Article 1 of the Hague Conventions for the Pacific Settlement of International Disputes stated that "With a view to abstaining as far as possible from recourse to force in the relations between States, the contracting powers agree to use their best efforts to ensure the pacific settlement of international differences", with account taken of the proviso contained in Article 2, "as far as circumstances allow".

Yet from the point of view of international law, war was still seen as a natural function of the State and the prerogative of its unlimited sovereignty.

The Decree on Peace formulated by Lenin and promulgated by the Soviet State on 8 November 1917, proclaimed for the first time in human history the need to outlaw wars of aggression and to declare them an international crime.

In his famous message, U.S. President Woodrow Wilson outlined a set of ideas that subsequently affected the development of this principle within the League of Nations.

The Covenant of the League of Nations set restrictions on the use of military force, without actually banning it. On the other hand, the Preamble to the Covenant proclaimed the need to assume certain obligations not to resort to war. The Covenant stressed that the territorial integrity and existing political independence of all member States should be respected and protected against any external aggression. But in certain specific cases, member States were entitled to resort to military force as a legitimate method of settling conflicts.

However, by that time the League of Nations had already drawn up the Draft Treaty of Mutual Assistance of 23 September 1923, the Geneva Protocol on the Pacific Settlement of International Disputes of 2 October 1924,[1] and the Declaration of the Assembly of the League of Nations Concerning Wars of Aggression of 24 September 1927 (Para. 1 of which states that "all wars of aggression are, and shall always be, prohibited"). Outside the League of Nations, mention should be made of the Treaty of Paris of August 27, 1928 on the renunciation of war as an instrument of national policy; the Moscow Protocol

[1] Neither of these instruments came into force.

on the Pact of Paris of 9 February 1929; the London Conventions on the Definition of Aggression, the Rio de Janeiro Treaty of Non-Aggression and Conciliation of 10 October 1933, and the Buenos Aires Convention of 23 December 1936. All these covenants proclaimed that the contracting parties condemned wars of aggression both in their relations among themselves and in relations with non-member-States and that all conflicts and disputes of any kind that might arise between them should be settled only by peaceful means under international law.[1]

A series of bilateral non-aggression pacts were signed at that time, in essence proclaiming the renunciation of the use of military force. For example, starting from 1925 the Soviet Union signed eleven non-aggression treaties with its neighbours,[2] while in 1926 and 1927 France signed treaties of non-aggression with Romania and Yugoslavia.[3]

Of the greatest significance is the Paris Treaty of 1928, Art. 1 of which proclaimed: "The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another." Article 2 stated that "the High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means". Contemporary international law has on numerous occasions pointed out the special importance of the Paris Treaty, in particular at the Twenty-Seventh General Assembly Session in 1973.

The Judgement of the International Military Tribunal in Nürnberg stated "that resort to a war of aggression is not merely illegal, but is criminal", and that " to initiate a war of aggression, therefore, is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole".[4]

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[1] See: The *American Journal of International Law*, Vol. 37, 1937, Supplement, pp. 58-63.

[2] See: *Soviet Foreign Policy: Documents*, Vol. III (1925-1934), Moscow, 1945 (in Russian).

[3] G. Wasmund, *Die Nichtangriffspakte*, Leipzig, R. Noske, 1935, Appendix 2.

[4] *Trial of the Major War Criminals Before the International Military Tribunal. Nuremberg, 14 November 1945-1 October 1946, Official Documents*, Vol. 1, Nuremberg, Germany, 1947, pp. 222, 186.

Thus the principle of renunciation of the use or threat of force is today one of the fundamental principles of international law and is as such enshrined in Para. 4, Art. 2 of the UN Charter, which imposes certain obligations on States in their international conduct: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations."

The UN General Assembly frequently adopted resolutions calling upon all States to renounce the use of force in international relations.[1]

In recent years this principle was confirmed in the well-known declarations of the General Assembly on the strengthening of international security and the Declaration of 1970 on the Principles of International Law Relative to Friendly Relations and Cooperation Among States.

In 1972, on the initiative of the General Assembly, the United Nations adopted Resolution 2936 (XXVII) "Non-Use of Force in International Relations and Permanent Prohibition of the Use of Nuclear Weapons", which states: "The General Assembly solemnly declares, on behalf of the States Members of the Organization, their renunciation of the use or threat of force in all its forms and manifestations in international relations, in accordance with the Charter of the United Nations, and the permanent prohibition of the use of nuclear weapons; recommends that the Security Council should take, as soon as possible, appropriate measures for the full implementation of the present declaration of the General Assembly."[2]

The importance of this resolution also lies in the fact that, for the first time in the entire history of the United Nations, the General Assembly thoroughly examined the question of implementing the fundamental principle of the Charter—the principle of the non-use of force—in close connection with the permanent prohibition of the use of nuclear weapons, that is to say, taking into account the objective realities of the modern world.

The resolution reaffirms the inherent right of all States, as stipulated in Article 51 of the UN Charter, to self-defence against armed attack; underlines the principle of inadmissibility of acquisition of another's territory by force and points out the inherent right of all States to recover such territories by all

[1] See, for example, UN Docs. 2160 (XXI), 2625 (XXV), 2680 (XXVI).
[2] UN Doc. A/Res/2936 (XXVII), 4 December 1972.

available means; reaffirms the recognition, as embodied in many previous UN decisions, of the legitimacy of struggle by colonial peoples for their freedom and national independence.

The need to consider as a package the non-use of force in general and the prohibition of the use of nuclear weapons in particular is determined by the existing situation in the world. From the very moment of their appearance, nuclear weapons have always been seen as the most dangerous weapons of mass destruction. This is just as true today, especially since the destructive force of nuclear weapons keeps growing.

At the same time, the discussion of this question at the session showed that the realization of the principle of renunciation of the threat or use of force must cover all types of weapons, both nuclear and conventional. It was emphasized that the importance of banning the use of all types of weapons is determined by the fact that after World War II there were numerous armed conflicts, all of which were waged with conventional weapons.

Contemporary international law contains obligations (expressed above all in treaty form) consisting in the elaboration and adoption of a coherent system of specific international legal instruments aimed at the realization of the prohibition of the use or threat of force in any form and with any types of weapons.

The question arises of the legal force of this obligation in the context of modern international relations. The Soviet Union's proposal at the Thirty-First Session of the UN General Assembly to conclude a Universal Treaty of the Non-Use of Force was a concrete realization of this. The overwhelming majority of the UN member States supported the Soviet proposal and agreed with the need to consider the conclusion of the Universal Treaty on the Non-Use of Force as an important means of strengthening and safeguarding peace (see General Assembly Resolution of 8 November 1976).

The Soviet proposal sets the aim of concretizing the principle of prohibition of the use or threat of force embodied in the UN Charter and translating it into reality on a broad and universal basis. In his speech at the General Assembly Session, Andrei Gromyko, head of the Soviet delegation, said: "It could be said that the principle of renunciation of the use of force is already embodied in the UN Charter. That is true. But it is no less true that many States are seeking ways to firmly establish this principle in practice."[1]

[1] *Pravda*, September 20, 1976.

International practice transforms, develops and concretizes the principles of the UN Charter in bilateral and multilateral legal instruments. They are also embodied in multilateral conventions and agreements, including those concluded under UN auspices.

It should be borne in mind, however, that the UN Charter was formulated and signed in the pre-nuclear era. And although the Charter was conceived as a treaty of unlimited duration, today nuclear weapons have grown into a gigantic, highly ramified complex of types and subtypes, radically changing our ideas of the possible consequences of an armed conflict. That is why in 1972 the UN General Assembly adopted the special resolution mentioned above, linking the renunciation of the use of force with the permanent prohibition of the use of nuclear weapons. There is little doubt that this resolution gave a new dimension to the realization of this generally recognized principle of international relations. In this connection, conclusion of a universal treaty banning the use or threat of force is now as urgent as ever.

Yet certain Western jurists believe that universal international law does not rule out the possibility of recourse to force in international relations not only for purposes of self-defence, but for other reasons: for example, in the event of a serious breach of international law, or for preventive purposes. The rules and principles laid down in the UN Charter, including the principle of prohibition of the threat or use of force, ostensibly are not principles of universal international law, but constitute enactments of a special nature. Such Western scholars as Alfred Verdross (Austria), Hans Kelsen (USA), Lasso Oppenheim (Great Britain), and Friedrich Berber (West Germany) believe that the use of force is quite admissible and that the UN Charter cannot be equated with generally recognized universal international law. This approach is not shared by the socialist concept of international law—however, it must be taken into account when it comes to applying this principle on a universal basis, that is to say, on a basis mandatory for all.

The draft Universal Treaty speaks above all of the need to ban the use of military force, proceeding from the definition of aggression worked out by the United Nations. It speaks of banning the use of any types of weapons, including nuclear weapons and all other types of weapons of mass destruction on land, on the high seas, in the air, and in outer space, and also of banning the threat of such use.

The concept and objective content of the principle of prohi-

bition of the use or threat of force incorporates the realization of this principle in any form, that is, raises the question of prohibiting all types of force in international relations. In so doing, the draft closely links such prohibition with measures aimed at disarmament. The text contains a special article calling on all States to make every effort to take effective measures to reduce the level of military confrontation and bring about disarmament. Adoption of a Universal Treaty on the Non-Use or Threat of Force would give a new perspective to guarantees of international security and would provide favourable conditions of trust for the accomplishment of the global goal of the present day—disarmament.

Let us repeat once again that the principle of the non-use or threat of force is embodied in the most general form in para. 4 of Article 2 of the UN Charter. This general wording of the principle has given rise to much controversy, opening the door to various interpretations of both the principle itself and especially of the scope of the term "force". The correct interpretation and further progressive development of the principle of the non-use of force is a very important problem from both the theoretical and practical points of view. In the course of discussion of the Soviet proposal, several delegations from the developing countries suggested adding provisions expanding the concept of "non-use of force". For example, they proposed that the term should include economic and political pressure, interference in domestic affairs, activity aimed at destabilizing existing regimes, and the use of foreign mercenaries. The solution of this problem will make it possible to specify and concretize the obligations of States arising from para. 4 of Art. 2 of the Charter and facilitate the establishment of essential legal prerequisites for a more effective realization of this and other principles of the UN Charter aimed at safeguarding international peace and security.

When one examines the principle of the non-use of force, its legal content and its importance for the development of international relations, the question arises: what exactly does the word "force" in para. 4, Art. 2 of the UN Charter mean? Does it only mean military force or does it cover such non-military forms as, for example, economic or political coercion? Depending on the specific content of the concept of force, the scope of unlawful coercion will be either restricted or expanded. An examination of opinions expressed in this connection prompts the conclusion that the vast majority of Western scholars prefer the narrow interpretation of the concept of force,

while most scholars from the socialist and developing countries hold the opposite view, believing that the term "force" in para. 4, Art. 2 of the UN Charter implies non-military as well as military forms of coercion.

The Special Committee on Principles of International Law Concerning Friendly Relations and Cooperation Among States carried out a detailed examination of this principle at its 1964 Session in Mexico and its 1966, 1969 and 1970 Sessions in New York.

The report to the Committee's Second Session states that "general agreement has been reached on the fact that wars of aggression constitute a crime against peace, as recognized in the Statutes of the Nuremberg and Tokyo International Military Tribunals".

The socialist doctrine of international law[1] considers that the use of military force for purposes of aggression constitutes the most dangerous form of the use of force, that is, an encroachment on national sovereignty, and as such is illegal. Paragraph 4 of Article 2 of the UN Charter prohibits violence in international relations in any form, regardless of whether such violence or the threat of it is used directly or indirectly, on a limited or unlimited scale, under a pretext or without any pretext.

The UN Charter prohibits the use of force for aggressive purposes in the form of economic pressure, as well as military intervention. The Charter deliberately delineates the concepts of territorial integrity and political independence. Such a distinction applies to cases where there is a violation of political independence without an actual breach of territorial integrity, for example, under economic pressure. Contemporary international legal theory and practice define both military and economic force. Consequently, a number of bilateral non-aggression treaties ban not only military attack, but any kind of economic pressure as well.

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[1] See, for example, R. E. Sharmanazashvili, *The Principle of Non-Aggression in International Law*, Moscow, 1958; Yu. Mikheyev, *The Use of Coercion Under the UN Charter*, Moscow, 1967; E. Krivchikova, *The UN Armed Forces*, Moscow, 1965; G. Nikitin, "On the Concept of Force in Modern International Law", *Mezhdunarodnaya Zhizn* (International Affairs), No. 9, 1971; D. Levin, *International Law and the Protection of Peace*, Moscow, 1971; M. Liax, *The Geneva Agreements of 1954 on Indochina*, Moscow, 1956 (all in Russian); S. Stefanova, "Questions of Disarmament Control", *Yearbook of Sofia University*, Vol. L, 1961; R. Bierzanek, *Prawa czlowieka w konfliktach zbrojnych*, Warszawa, 1972; A. Jacewiez, *Rojęcie sily w kacie Narodów Zijednocznych*, Warszawa, 1976; V. I. Menzhensky, *The Non-Use of Force in International Relations*, Moscow, 1976 (in Russian).

The Charter's Preamble and Articles 41 and 42 interpret the concept of force not only as military force, but also as economic and political coercion. In particular, Article 41 speaks of coercive measures not involving the use of armed force to be applied to aggressors.

The documents of the Bandung, Belgrade, and Cairo Conferences of Non-Aligned Countries give a similar interpretation of the use of force in international relations. For instance, the Declaration of the Second Conference of Non-Aligned Countries (Cairo, 1964) states that "...the use of force may take a number of forms, military, political and economic..."

Principle II of the Final Act of the Conference on Security and Cooperation in Europe prohibits any actions constituting a threat of force or any direct or indirect use of force against another member State.

An examination of the scope of the concept of force only from the point of view of literal and logical interpretation cannot testify to the final correctness of either the broad or narrow interpretation. However, the examination that has been carried out confirms the frequently expressed opinion that, from the viewpoint of legal terminology and clarity, certain definitions in the UN Charter are far from perfect. Therefore, special importance should be attached to a purpose-oriented interpretation of the Charter and, specifically, the principle of non-use of force embodied in it.

The principle of prohibition of the use or threat of force is embodied in the UN Charter for a specific purpose: to maintain international peace and security, to develop friendly relations between nations based on respect for equality and self-determination, and to find solutions to economic, social, cultural and humanitarian problems in inter-State relations through international cooperation. The opponents of a broad interpretation of force prefer not to mention these purposes of the UN Charter, whereas its advocates frequently emphasize them, pointing out not only the importance of Paragraph 1, Article 1, but also the need to develop friendly relations between peoples and to resolve international problems through cooperation.

What is the correlation between the principal goal of the United Nations—maintaining international peace—and the principle of non-use of force? Can international peace be violated through the use of non-military force? An analysis of the concept of peace as applied in the UN Charter prompts the conclusion that the Charter interprets peace and security as the exact opposites of the use of force or threat of force. This

confirms the general opinion about the close relationship between the ban on the use of force and the principle of peaceful settlement of disputes formulated in Para. 3, Art. 2. Proceeding from this, it can be considered that the term "peaceful means" is a means without the use of force, whereas the term "threat to or violation of the peace", including aggression, should correspond to the concept of threat or use of force.

Thus, this interpretation in accordance with the purposes of the Charter obviously prompts the conclusion that the broad understanding of the concept of force is the only correct one. And we would arrive at the same conclusion through a systematic interpretation, that is, an interpretation of the Charter's provisions in connection with other principles of international law.

How, then, should Para. 4 of Art. 2 of the UN Charter be interpreted in practice? Of special importance here is analysis of General Assembly resolutions, since the interpretation of the Charter's provisions in the documents of the Organization's main body, in which all its member States take part, should be considered the only authentic interpretation. Unfortunately, references to the prohibition of the use of force in these resolutions are of a very general nature. A detailed analysis shows that there is not a single General Assembly resolution or decision which would explicitly and unequivocally point out that the term "force" is used in the Charter to mean military force. On the other hand, there is not a single resolution that would recognize the application of non-military coercion as the use of force. The wording of certain resolutions suggests that it is a compromise between the advocates and opponents of a broad definition of force and is, therefore, open to various interpretations.

The only document adopted by a regional organization to give an explicit definition of force in the broad sense is the Cairo Declaration of 1964, in which the broad interpretation of the term "force" certainly applies to Para. 4 of Art. 2 of the UN Charter.

At present, the majority of States accept the concept that interprets the term "force" in the broad sense. The growing number of proponents of this broad interpretation has resulted, on the one hand, from the accession to the United Nations of new members from the developing Third World and, on the other, from a number of countries rejecting the narrow interpretation.

Characteristically, those who prefer the narrow interpretation of the concept of force belong to the most developed capitalist countries.

Indeed, the leading capitalist nations have until recently been able to monopolize the use of non-military pressure, specifically on the developing countries. It is not surprising, therefore, that they are against a broad interpretation of force. Yet the ability to resort to force is not the exclusive privilege of the technologically advanced capitalist countries, which fact was convincingly demonstrated by the Arab countries' recent oil embargo. Curiously, from that moment onward, Western bourgeois jurists opposing the use of an oil embargo as an instrument of international politics immediately adopted the broad interpretation of force as in the UN Charter. It is obvious that the changes occurring today in the world, including changes in the balance of forces to the disadvantage of imperialism, will encourage more and more countries to adopt the broad interpretation of the prohibition of the use of force. This, in turn, will prepare the ground for the adoption of the Soviet proposal for a Universal Treaty on the Non-Use of Force.

Yet the Soviet Union has never considered this proposal as the only possible way to ensure political and legal international guarantees of security, although the conclusion of such a treaty would undoubtedly enhance the scope and effectiveness of such guarantees. A good example of this is the Soviet proposal on the definition of aggression, which was embodied in a General Assembly resolution adopted in 1974.

The Thirty-Second Session of the General Assembly approved the Soviet proposal to set up a new UN body—the Ad Hoc Committee for Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations, which is at present in the process of working out a relevant international agreement.

The development of the principle of non-use of force in a concrete international agreement is connected, above all, with the prohibition or restriction of the use of specific types of weapons.

Consequently, the conclusion of a Treaty on the Non-Use of Force is a most important international legal guarantee of the prohibition or restriction of the use of specific types of weapons.

On the other hand, one must bear in mind the possibility of legitimate (from the point of view of international law) use of force, above all, military force. The concepts of just and

unjust wars, which, in the words of Judge N. Singh[1], in the Middle Ages were of purely academic significance, have today acquired legal status in international law after the adoption of the UN Charter and the Paris Treaty of 1928.

The possibility of outbreak of war as a result of various social and economic causes remains just as real as the wars themselves and, consequently, the laws and customs of war are just as relevant today, as are the problems of their development and humanization and the problems of protection of human rights in conditions of armed conflict.

The renunciation of the use or threat of force does not in any way encroach on the right of peoples, including the oppressed colonial peoples, to defend themselves in the face of aggression, to liberate themselves from foreign occupation, to fight for their freedom, independence and legitimate interests using all the means at their disposal. Under the UN Charter, all States must render assistance to a nation fighting to exercise its right to self-determination.

And finally, the United Nations itself has the legitimate right under its Charter to resort to armed force in cases where international peace is violated or there is a threat to international peace and security.

The use of armed force cannot be ruled out in an internal armed conflict, for example, a civil war.

Thus the use of armed force and, consequently, of various types of weapons, in an armed conflict is perfectly legitimate in certain situations from the viewpoint of international law and is subject to international legal regulation. But today the general trend of this regulation is towards increased restriction and prohibition of the use of certain types of weapons, the banning of certain types of weapons from international relations, and increased protection of human rights and fundamental freedoms.

From the viewpoint of international law, it can be said that the principles of prohibition of the use or threat of force, prohibition and restriction of the use of certain types of weapons, and the principle of disarmament all constitute a single trend in international relations.

In contemporary international law, the existence and development of the principle of prohibition of the use and threat of force is closely connected with the principle of disarmament, the interpretation of which is essential for an understanding

[1] N. Singh, *Nuclear Weapons and International Law*, London, 1959, p. 29.

of the role of existing international treaties banning or restricting the use of conventional weapons.

Today a disarmament agreement is not just a political demand supported by the vast majority of States, but actually a principle of present-day international law. This idea, proposed and consistently advocated by jurists in the socialist countries, is gaining recognition worldwide. Proof of this is the inclusion of a special clause on disarmament in the Declaration on Principles of International Law, which was unanimously approved by the General Assembly on 24 October 1970. In general, jurists in all countries are devoting more and more attention to the legal aspects of disarmament. The growing interest in the subject is quite natural since several treaties restricting the arms race have already been signed and there is a real possibility that more agreement will be reached in the near future.

The question of the emergence and establishment of the principle of disarmament in international law, its content and international legal consequences are being extensively studied in socialist legal doctrine. This is of great practical, as well as theoretical, importance.

There is no single opinion on the nature and content of the principle of disarmament. Some jurists believe this principle is already fully established; others argue that it has not yet completely taken shape since there is no rule in international law that would require all States to disarm, and that only a Treaty on General and Complete Disarmament would establish this principle in international law.[1] We find it hard to agree with this latter argument.

The very concept of a principle implies a fundamental underlying idea or rule, rather than specific details. A Treaty on General and Complete Disarmament, however, apart from setting forth certain principles, must specify, in every detail, the terms and procedure for carrying out a programme of disarmament. It is clear that disarmament affects the vital security interests of all States and can only be put into effect through a specific treaty or system of treaties.

A clear distinction should be made between the formation of the principle of disarmament and the concrete measures to implement this principle. Therefore, since a Treaty on General and Complete Disarmament will express an agreement between

[1] See: Yves Collart, *Disarmament: A Study Guide and Bibliography on the Efforts of the United Nations*, The Hague, Nijhoff, 1958; Allan Gotlieb, *Disarmament and International Law*, Toronto, Canadian Institute of International Affairs, 1965.

nations on the details of a disarmament programme, it would be more appropriate to view such a treaty as the first step in implementing the principle of disarmament rather than the completion of formation of this principle.

The principle of disarmament obligates all States to work out measures of partial disarmament. This aspect has great practical importance. Recent years have seen the conclusion of several treaties curbing the arms race, including a treaty on actual disarmament—the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on Their Destruction (1972). Therefore, to a certain extent, the principle of disarmament is already being implemented. So the claim that the principle of disarmament has not even taken shape yet, seems at least strange. Such claims are flagrantly at odds with the high level of obligations already assumed by a number of States under international treaties. Moreover, such claims play down the role of international law as a regulating factor promoting disarmament.

The content of the principle of disarmament has crystallized not only in the numerous, unanimously adopted resolutions of the General Assembly, but also in treaties intended to curb the arms race (particularly in Art. VI of the Non-Proliferation Treaty), in a number of bilateral and multilateral international treaties, and in a group of unilateral and multilateral declarations and statements made by States. For example, under the Indo-Soviet Treaty, both sides assumed certain obligations concerning disarmament (Art. II). The Principles of Cooperation between the USSR and France, and the Fundamentals of U.S.-Soviet Relations (signed in October 1971 and May 1972, respectively), stipulate that the Sides will work toward universal and complete disarmament, above all nuclear disarmament.

All this goes to prove that the principle of disarmament is fully established in international law and efforts should now be concentrated on its implementation. The legal content of the principle of disarmament can be defined as follows: all States must scrupulously adhere to and implement existing treaties on disarmament, promote their universality and work for the conclusion of new treaties aimed at curbing the arms race and promoting disarmament, especially nuclear disarmament, and the elimination of all other weapons of mass destruction; banning or restricting the use of conventional weapons under the principle of equal security, and leading, in the long run, to universal and complete disarmament under strict international

control, and ensuring man's right to live in peace and freedom. This definition of the principle of disarmament is directed not only at following up and finalizing what has already been done in curbing the arms race and promoting disarmament, but also at working out a system of treaties on effective and radical measures to bring about general and complete disarmament.

A Treaty on General and Complete Disarmament would go far beyond mere implementation of the principle of disarmament. It would, in fact, essentially transform international law as it exists today and would place the principles of peaceful coexistence and non-aggression on an entirely new foundation, since the elimination of all weapons would rule out all international relations except those based on peace and peaceful coexistence.

One stage in implementing the principle of disarmament is banning or restricting the use of certain types of weapons. Agreement on a set of principles for banning or restricting the use of certain types of weapons on a universal basis and on the basis of equality and equal security leads, in the long run, to the conclusion of a treaty on the elimination of a certain type of weapons.

On the other hand, the very process of disarmament, that is to say, reaching an accord on arms reduction or on the cessation of production, stockpiling and proliferation of a certain type of weapons, is the best guarantee that the use of that weapon will actually be banned or restricted. The principle of disarmament, intended to refrain from jeopardizing the security of any State party to the negotiations, covers all types of weapons, giving no State any significant military advantage, regardless of whether such a State possesses nuclear arms or not.

The close relationship between disarmament and prohibition or restriction of the use of certain types of weapons, and also the exercise of human rights and freedoms, has an objective nature and underlies both the elaboration of mutually agreed principles on prohibition or restriction, and their implementation under strict international control.

§ 2. International Responsibility for Violations of Human Rights and Freedoms

International responsibility for violations of human rights and freedoms is an important element in raising the effectiveness

of international humanitarian law. The twentieth century has made especially relevant the question of the responsibility of States and of individuals for violating international humanitarian law, and specifically the laws and customs of war.

The complexity of the problem consists above all in the fact that it highlights the distinction between questions lying exclusively within the internal jurisdiction of each State and questions within the jurisdiction of international organizations and tackled jointly by several States (efforts to ensure peaceful relations between nations, and bring about the realization of the basic principles and norms of international law and decisions on human rights and fundamental freedoms).

Questions related to responsibility for violations of human rights and freedoms arise between States both in time of peace and in time of armed conflict.

In peacetime there is less possibility of violation of human rights and freedoms since, in compliance with international obligations, each government must promote the establishment on its territory of a democratic regime that would be most conducive to the exercise of human rights and fundamental freedoms.

The question of international responsibility for violations of human rights and freedoms arises primarily in the event of systematic flagrant violations on a mass scale of human rights and freedoms. In such situations, the question of international responsibility of a State is considered in conjunction with the question of criminal responsibility of the natural persons actually guilty of committing crimes under international law.

In peacetime, the forms of such responsibility include discussion of cases of human rights violations in international organizations and adoption of decisions condemning such violations and demanding that they be ceased, that those guilty be brought to trial, that sanctions be applied against the State whose government has perpetrated such crimes, etc.

The evolution of international responsibility for violations of international humanitarian law has gone through several stages and is most developed in international instruments dealing with armed conflicts.

Article 3 of the Hague Convention of 1907 Respecting the Laws and Customs of War on Land stipulates that "a belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces."

However, this article placed emphasis on the question of responsibility for material damage, and also made it possible to interpret its latter part as absolution of natural persons from responsibility for unlawful acts and, in effect, shifting their responsibility onto the State. An important landmark in the development of the concept of responsibility in international humanitarian law is Article 227 of the Treaty of Versailles (1919), on the basis of which the Allied Powers publicly accused Emperor Wilhelm II of Germany of the gross contempt for international morality and sanctity of a treaty. It was decided to set up an international tribunal to try Wilhelm II. However, the Netherlands refused to extradite him, and the Leipzig trials of the other German war criminals were of a limited nature. That was the time when the concept of criminal responsibility of natural persons for violations of the laws and customs of war was only taking shape. In the period between the two world wars this concept continued to develop. Most worthy of mention in this regard are the Hague Rules of Aerial Warfare (1923), the Geneva Convention of 1929 for the Relief of the Wounded and Sick in Armies in the Field, and the Geneva Convention of July 27, 1929, Relative to the Treatment of Prisoners of War.

For example, Article 28 of the Geneva Convention of 1929 for the Relief of the Wounded and Sick in Armies in the Field provides for the obligation of the belligerents, in cases where their own laws on war crimes prove insufficient, to adopt or propose to State legislative bodies a set of measures to prosecute persons violating international humanitarian rules for the protection of the wounded and sick in armies in the field.

The concept of the responsibility of war criminals for violations of the laws and customs of war took its final shape during and after World War II.

The crimes committed by the German Nazis provoked such outrage in the international community that even the most diehard opponents of the introduction of the concept of responsibility for war crimes into international law had to back down.

The Allied Powers started out by setting up on their own territory commissions to investigate the crimes committed by the Nazis and collaborators and to ascertain the extent of damage caused to individual citizens, public organizations, and States. The UN member States made public a number of notes and statements informing the world public of the atrocities committed during World War II in violation of the laws and customs

of war and warning of the responsibility for those crimes.[1]

In 1943, the Soviet authorities held trials of war criminals in Kharkov, Krasnodar, Kiev, Minsk, Riga, Smolensk, Bryansk, Leningrad and a number of other cities. In August 1945, the Soviet, U.S., British and French governments signed in London an Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis. The Agreement was based on the Moscow Declaration of 30 October 1943, which stated that the German soldiers and officers and members of the National Socialist Party responsible for atrocities and those voluntarily taking part in them would be sent back to the countries where they committed those crimes to be tried and punished under the laws of those newly liberated countries and by the freely elected national governments.

Under the Agreement of 8 August 1945, an International Military Tribunal was set up to try the major war criminals whose crimes were not restricted to any particular locality. They were to be tried by all the Allied Powers jointly. The Charter of the International Military Tribunal for the first time in history enumerated international crimes that incur individual responsibility:

a). *Crimes against peace*: namely, planning, preparation, initiation or waging of war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

b). *War crimes*: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment, or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastations not justified by military necessity;

c). *Crimes against humanity*: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecution on political, racial or religious grounds for the purpose of committing or in connection with any crime under the Tribunal's jurisdiction, irrespective of whether or not these

[1] See, for example, *The Soviet Union's Foreign Policy During World War II*, Moscow, 1946, Vol. I, pp. 184-190, 195-215, 228-269, 314-319 (in Russian).

acts actually violated the national law of the country in which they were committed.

Article 6 emphasized that "leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes, are responsible for all acts performed by any persons in execution of such plan".

But even in those days, there were some politicians who opposed the idea of bringing the war criminals to justice, claiming that the Nürnberg Tribunal was a court under the occupation, not an international one, conducting a trial of the victors over the vanquished instead of administering real justice.[1] Those opponents seemed to forget that it was not just the four Allied Powers, but another nineteen countries as well, that had approved and acceded to the Charter of the Nürnberg Tribunal. Furthermore, on 11 December 1946, the UN General Assembly adopted Resolution 95 (I) confirming the principles of international law laid down in the Charter of the Nürnberg Tribunal and reflected in the Tribunal's Judgement as universally recognized.

Robert Jackson, the Chief Prosecutor from the United States at the trial, said: "The worldwide scope of the aggressions carried out by these men has left but few real neutrals. Either the victors must judge the vanquished or we must leave the defeated to judge themselves. After the First World War, we learned the futility of the latter course."[2] Significantly, under the Peace Treaties of 1947, the Allied Powers tried not only citizens of the Axis powers, but their own citizens as well.

The Second Session of the UN General Assembly instructed the International Law Commission to formulate the principles of international law recognized in the Charter of the Nürnberg Tribunal and reflected in its Judgement, and to draw up a draft code of laws on crimes against peace and security of mankind, stipulating the part played by the Nürnberg Principles (Res. 177 II).

In 1954, the International Law Commission presented the draft code. However, the General Assembly decided to postpone

[1] See: A. Knieriem, *The Nuremberg Trials*, Chicago, 1950, pp. 101-102; H. Kelsen, "Will the Judgement in the Nuremberg Trial Constitute a Precedent in International Law?", in: *International Quarterly*, 1947, No. 7, p. 153; F.H. Maugham, *U.N.O. and War Crimes*, Murray, London, 1951, pp. 27, 46, 102.

[2] *Trial of the Major War Criminals Before the International Military Tribunal*, Nuremberg, Vol. II, Proceedings, 1947, p. 101.

its examination pending the adoption of an appropriate definition of aggression (Res. 377/IX), The Nürnberg Principles, regarded by the United Nations as universally recognized, extended the list of crimes incurring international legal responsibility, and also laid down a new set of standards of international law.

The principles embodied in the Charter and Judgement of the Nürnberg Tribunal had a great impact on the development of international legal rules concerning the extradition of war criminals and the non-applicability of statutory limitations to war crimes.

The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, adopted by the General Assembly in 1968, lists, apart from the crimes enumerated in the Charter of the Nürnberg Tribunal, eviction of the population as a result of armed attack or occupation and inhumane acts resulting from policies of apartheid, and also the crimes of genocide.

It will be recalled that the General Assembly Resolutions of 13 February 1946 (Extradition and Punishment of War Criminals) and 31 October 1947 (Extradition of War Criminals and Traitors) speak of the duty of States to extradite persons who have committed crimes listed in Article 6 of the Charter of the Nürnberg Tribunal. The Declaration on Territorial Asylum, adopted at the Twenty-Second Session of the General Assembly in 1967, states in Article 1 that the right of asylum shall not be claimed by any person in relation to whom there are serious grounds for supposing that he has committed a crime against peace, a war crime, or a crime against humanity (Res. 2312/XXII).

Under Arts. 1 and 4 of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1968), no statutory limitations shall apply to war crimes and crimes against humanity, and the signatory States shall be under an obligation to take legislative and other measures to guarantee the implementation of this rule.

The Geneva Conventions on the Protection of Victims of War (1949) provide for criminal responsibility under international law for a number of war crimes not mentioned in the Fourth Hague Convention of 1907, but listed in the Charter and Judgement of the Nürnberg Tribunal. Article 146 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War states:

"The High Contracting Parties undertake to enact any

legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

"Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie case*."

All four Geneva Conventions of 1949 place their signatories under the obligation to take all necessary steps also to suppress all other actions incompatible with the Conventions' provisions.

Article 147 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (and the corresponding articles in the other three Conventions) states: "Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture, or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of a fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly."

The 1949 Geneva Conventions on the Protection of Victims of War introduced the principle of responsibility of a signatory State for the above-mentioned breaches. For example, Art. 148 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War states: "No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article."

In the course of discussion in the United Nations of the criminal responsibility of persons guilty of violating the laws and customs of war, the question arose of setting up an interna-

tional criminal court.[1] A draft statute of such a court was even presented to the UN. Without rejecting out of hand the use of international legal means, including the use of an international criminal court, in prosecuting and punishing persons who have committed grave international crimes, it should be pointed out that in present-day conditions one should not underrate the importance of national legal means and institutions for the prosecution of international criminals. The 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity stipulates above all the need for the prosecution and punishment of such criminals by national means.

The Geneva Conventions on the protection of victims of war have been ratified by most States, becoming their national law. That means that the principles of responsibility for violations of the Geneva Conventions has become part of their national legislation. A number of States have included in their penal codes the *corpora delicti* and corresponding sanctions stipulated in the Geneva Conventions.

In the Soviet Union, for example, Articles 30-33 of the Law on Criminal Responsibility for Military Crimes (25 December 1958) list such offenses as marauding casualties on the battlefield, acts of violence committed against the civilian population in the area of hostilities, ill-treatment of prisoners of war, unauthorized use of the symbols of the Red Cross and Red Crescent, as well as abuse of these symbols. The same offenses are listed in Articles 266-269 of the Criminal Code of the RSFSR (and corresponding articles in the criminal codes of the Union Republics).

The experience of applying the Geneva Conventions in local armed conflicts has demonstrated the effectiveness of the legal principle of responsibility for their violation, on the one hand, and a number of serious shortcomings, on the other.

This was demonstrated, for example, in the case of the U.S. Air Force pilots captured in Viet Nam. A letter from the Foreign Ministry of Viet Nam dated 31 August 1965 to the International Committee of the Red Cross stated that the U.S. bomber pilots had been shot down in the act of killing Vietnamese citizens and destroying the country's material wealth and must, therefore, be tried under Vietnamese law. The captured pilots would, consequently, be subject to the regime stipulated in Viet Nam's accession clause to Article 85 of the Geneva Conventions

[1] *Official Records of the United Nations General Assembly.* Seventh Session: Suppl. No. 11 (A) 2138; Ninth Session: Suppl. No. 12 (A) 2645.

on the Protection of the Victims of War (1949), which states that "the Democratic Republic of Viet Nam will not grant the right of protection under the present Convention to those prisoners of war who have been brought to trial and convicted for grave military crimes or grave crimes against humanity in accordance with the principles laid down by the International Nürnberg Tribunal". Under this clause, the American pilots were granted a special regime that occupied an intermediate position between prisoner-of-war status and military-criminal status. In the Vietnamese Government's opinion, this clause heightens the responsibility for observing the laws and customs of war and, therefore, enhances the humane character of the Convention, which is called upon to prevent such crimes.

The whole world learned about the Mai Lai Case, in which several U.S. soldiers and junior officers were tried for massacring the residents of the Vietnamese village of Mai Lai. Also arraigned on criminal charges were fourteen high-ranking U.S. officers, including General Samuel Koster, commander of the division to which the unit that massacred the population of Mai Lai belonged. These fourteen were charged with concealing the fact of the massacre from the American high command.[1]

In 1976, a trial was held in Angola of British and U.S. mercenaries hired by UNITA and FNLA. They were found guilty of committing crimes against the civilian population and other breaches of the Geneva Conventions of 1949, and were subsequently convicted.[2]

The problem of responsibility for violations of the Geneva Conventions of 1949 also arose in connection with the Middle East conflict. The UN Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories[3] found that Israel had committed serious breaches of the Geneva Conventions, which fact raises the question of criminal responsibility of persons guilty of these crimes.

The development of methods and means of warfare, the experience of armed conflicts after the adoption of the Geneva Conventions of 1949, and certain shortcomings revealed in these

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[1] Telford Taylor, *Nuremberg and Vietnam: an American Tragedy*, Quadrangle Books, Chicago, 1970, pp. 123-153; John Fried, *Vietnam and International Law*, Flanders, N.J., O'Hare, 1967, pp. 56-63.

[2] Wjerred Burchett, Derek Roebuck, *The Whores of War: Mercenaries Today*, Hammondsworth, Penguin, 1977.

[3] UN Docs. A/9148, A/9817.

Conventions, including the principles of responsibility for their violation—all this has determined the need to work out Additional Protocols to these Conventions.

The Additional Protocol on Victims of International Armed Conflicts (Protocol I) contains a special section (Section II: "Repression of Breaches of the Conventions and of This Protocol"), which constitutes a certain codification of the principles of responsibility for violations of international humanitarian law. The Additional Protocol extends the list of international crimes and specifies in more detail a number of *corpora delicti* which were already banned by the Geneva and Hague Conventions. The Protocol determines that the grounds for criminal responsibility of natural persons shall be hostile acts committed against persons protected by Articles 44 and 45 (prisoners of war) and Article 73 (refugees and stateless persons), in accordance with pertinent international agreements concluded by the parties concerned or under national legislation of a State that has granted asylum of provided residence. In addition to what is stated in the Geneva Conventions, Art. 44 of the Protocol stipulates a major condition of qualifying a captured person as a prisoner of war: "...provided that ... he carries his arms openly: a) during each military engagement, and b) ...while he is engaged in a military deployment preceding the launching of an attack in which he is to participate". Under Article 45, arbitrary actions are also banned against "a person who has fallen into the power of an adverse Party ... not held as a prisoner of war and ... to be tried by that Party for an offense arising out of the hostilities..."

Acts committed against the wounded, sick and shipwrecked, or against medical or religious personnel, medical units or medical transports under the control of the adverse Party and protected by the Protocol are qualified in Para. 2 of Art. 85 as grave breaches of the Protocol.

Of great importance is Article II, "Protection of Persons", which provides a list of prohibited actions. Each party is responsible for the physical and mental health and integrity of persons in its power, of internees, detainees and of any other persons deprived of their liberty as a result of an international armed conflict.

Accordingly, it is prohibited to subject the persons described to any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards. It is, in particular, prohibited to carry out on such persons, even with their consent,

physical mutilations, medical or scientific experiments, and removal of tissue or organs for transplantation. Paragraph 4 of Art II prohibits not only such wilful acts, but also omissions which seriously endanger the physical or mental health or integrity of any person who is in the power of the adverse party.

In order to prevent such unlawful acts and provide certain guarantees against abuses, paragraphs 2 and 6 demand that each party to the conflict should keep a record of all medical procedures undertaken with respect to the aforementioned persons and that these records should be available at all times for inspection by the Protecting Power.

Article 85 of the Protocol lists the following *corpora delicti* that cause death or serious injury to body or health:

a) making the civilian population or individual citizens the object of attack;

b) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;

c) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;

d) making non-defended localities and demilitarized zones the objects of attack;

e) making a person the object of attack in the knowledge that he is *hors de combat*;

f) the perfidious use of the distinctive emblem of the Red Cross, Red Crescent, or Red Lion and Sun, or of other protective signs recognized by the Conventions or this Protocol.

Article 85 also defines the following actions as grave breaches of the Conventions and the Protocol:

a) the transfer by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Art. 49 of the Fourth Convention;

b) unjustified delay in the repatriation of prisoners of war or civilians;

c) practices of *apartheid* and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;

d) making the clearly recognized historic monuments, works of art or places of worship which constitute the cultural or

spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result excessive destruction thereof, where there is no evidence of the violation by the adverse Party of Article 53, subparagraph b), and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives;

e) depriving a person protected by the Conventions or referred to in Paragraph 2 of this Article of the rights of fair and regular trial.

All these provisions reflect the increasingly complex and brutal character of armed conflict, on the one hand, and the collective efforts of the international community to protect human rights, as far as possible, in conditions of armed conflict, on the other. The Additional Protocol raises the question of criminal responsibility of persons guilty of committing such crimes, which it qualifies as war crimes.

From the point of view of responsibility for observing the Geneva Conventions and Additional Protocol, of major importance is Article 86, which qualifies as a crime the failure to take measures to suppress and prevent breaches of the Conventions and Protocol.

Paragraph 2 of Article 86 states: "The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach."

Under Article 87, "the High Contracting Parties and the Parties to the conflict shall require military commanders ... to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol.

"The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of this Protocol, to initiate such steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof.

"In order to prevent and suppress breaches, the High Cont-

racting Parties and Parties to the conflict shall require that, commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations under the Conventions and this Protocol."

Thus, persons guilty of violating the Conventions and the Additional Protocol, and also their superiors who fail to prevent or suppress such violations, incur individual criminal and disciplinary responsibility.

Article 89 states that "in situations of serious violations of the Conventions or of this Protocol, the High Contracting Parties undertake to act, jointly or individually, in cooperation with the United Nations and in conformity with the United Nations Charter".

Such cooperation implies concerted actions under existing international agreements, and also the drawing up of new agreements.

The first group includes such international agreements as, for example, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1968), the Convention on the Prevention and Punishment of the Crime of Genocide (1948), and the Convention on the Suppression and Punishment of the Crime of Apartheid (1973). The latter group could include, for example, a convention on the extradition of persons who have committed war crimes and crimes against humanity, for a trial to be held at the venue of the crime, or a convention on an international criminal trial of persons who have committed war crimes and crimes against humanity, similar to the Nürnberg Tribunal. The Protocol provides for the unification of national legal standards on criminal responsibility for war crimes and crimes against humanity.

Article 88 of the Protocol provides for mutual assistance of the High Contracting Parties in connection with criminal proceedings. For example, in matters of extradition, due consideration shall be given to the request of the State in whose territory the alleged offense has occurred.

And finally, under Article 91, "a Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces".

In addition to individual criminal responsibility, the Protocol confirms the responsibility of the subject of international law for violations of the Conventions and Protocol.

This approach promotes the consolidation of international rule of law and places yet another obstacle in the way of violence and arbitrary rule in international relations.

* * *

A distinguishing feature of Protocol II (Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts) is that if it is ratified and comes into force in a certain country, its sphere of application is limited to the territory of that country and it is enforced together with that country's national laws, above all its Penal Code.

Protocol II introduces a number of new *corpora delicti*, which are so far absent in the Penal Codes of most States.

Such crimes include, as stated in Article 4, the following:

1) violence to the life, health and physical or mental well-being of persons who are not directly involved or have ceased to be involved in hostilities, regardless of whether or not their liberty is limited, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

2) collective punishments;

3) taking of hostages;

4) acts of terrorism;

5) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

6) slavery and the slave trade in all their forms;

7) pillage;

8) threats to commit any of the foregoing acts.

In accordance with Paragraph 2 of Article 13, "the civilian population as such, as well as individual citizens, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited".

Under Paragraphs 1 and 2 of Article 7, "all the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected. In all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds

other than medical ones". Medical and religious personnel shall be respected and protected at all times, shall be rendered all possible assistance in discharging their functions, and shall not be compelled to perform acts contrary to their humanitarian mission (Art. 10).

"Under no circumstances shall any person be punished for having carried out medical activities compatible with medical ethics, regardless of the person benefiting therefrom" (Para. 1, Art. 10). Medical units and transports shall not be the object of attack at any time, on condition that they are not used for hostile purposes or purposes outside their humanitarian functions. Article 12 prohibits any improper use of the distinctive emblem of the Red Cross, Red Crescent or Red Lion and Sun on a white ground, or any hostile acts against historical sites, works of art or places of worship constituting the cultural or spiritual heritage of a nation, and also their use to support military efforts.

In accordance with Article 14, "starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies, and irrigation works".

Under Article 15, "works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population".

Finally, "the displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand... Civilians shall not be compelled to leave their own territory for reasons connected with the conflict" (Art. 17).

All the aforementioned acts are regarded as criminal offences related to the armed conflict, which fact necessitates the prosecution and punishment of the offenders, as stipulated in Para. 2, Art. 6, of the Protocol.

Consequently, as the Additional Protocol on the Protection of Victims of Non-International Armed Conflicts is ratified and comes into force in a particular country, that country's Penal Code should be adjusted so that no part of it contradicts the Protocol.

The Additional Protocol is binding upon all citizens and officials involved in and all parties to a non-international armed conflict.

In practical terms, the Protocols Additional to the Geneva Conventions of 1949 proceed from the inadmissibility of "a criminal order", that is, an order to perform an act in violation of the Conventions or Protocols. Therefore, the issue of such an order constitutes a grave breach of the Conventions and Protocols, and the person issuing such an order is deemed to be a war criminal.

Execution of a criminal order constitutes a grave breach of the Conventions and Protocols and is, therefore, also deemed to be a punishable act.

The Additional Protocols have essentially embodied the principal concept of the Charter of the Nürnberg Tribunal, Article 8 of which states that "the fact that the defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment".

The International Military Tribunal stated in its Judgement: "It was also submitted on behalf of most of these defendants that in doing what they did they were acting under the orders of Hitler, and therefore cannot be held responsible for the acts committed by them in carrying out these orders." Referring to Article 8 of the Charter, the Tribunal concluded: "The provisions of this Article are in conformity with the Law of all nations. That a soldier was ordered to kill or torture in violation of the international law of war has never been recognized as a defense to such acts of brutality, though, as the Charter here provides, the order may be urged in mitigation of the punishment".[1]

In connection with the Keitel Case, the Tribunal stated: "Superior orders, even to a Soldier, cannot be considered in mitigation where crimes as shocking and extensive have been committed consciously, ruthlessly, and without military excuse or justification."[2]

Yet the Nürnberg Tribunal did not reduce the whole issue to the fact of a superior order. In each specific case, the Tribunal

[1] *Trial of the Major War Criminals Before the International Military Tribunal, Nuremberg, 14 November 1945-1 October 1946*, Nuremberg, Germany, Vol. I, pp. 223-224.

[2] Ibid., p. 291.

sought to determine whether or not the defendant had actually been able to make a free choice. In its judgement on the top officials of the SS and other punitive bodies, the Tribunal stated: "The subordinate is bound only to obey the lawful orders of his superior and if he accepts a criminal order and executes it with a malice of his own, he may not plead superior orders in mitigation of his offence. If the nature of the ordered act is manifestly beyond the scope of the superior's authority, the subordinate may not plead ignorance to the criminality of the order."[1]

It should be pointed out that the absence of a similar provision in the Additional Protocols does not imply that today such international legal principles do not exist or have only a limited application. Having approved the principles of the Charter of the International Military Tribunal as general principles of international law, the UN General Assembly reiterated these principles, including all the legal consequences of issuing a criminal order and of its execution.

Today, with the advent of fundamentally new weapons and methods of warfare, the issue assumes special significance.

Certain jurists in the West claim that the execution of a criminal order and the problem of responsibility depend on the order's normative character (legality). If the order is obviously unlawful, legal obligation gives way to obligation of allegiance. Others try to transfer the issue of responsibility from the realm of law to the realm of morality, claiming that the moral postulates of society should be seen as mitigating circumstances.

Such an interpretation of responsibility for execution of a criminal order can hardly be justified from the viewpoint of international law, since both judicial practice and the legal substance of international agreements do combine human morality and legal obligation based on international agreement.

The Additional Protocols have introduced an integral system of legal responsibility for violations of the laws and customs of war, which will undoubtedly help to prevent war crimes in the future and promote the exercise of human rights.

The coming of this system of responsibility into force on the territory of each particular State takes place along two lines: first, the direct enactment of the Protocols and, in the absence of similar provisions in the national Penal Code, the

[1] *Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10*, Vol. IV, Nürnberg, October 1946-April 1949, pp. 470-471.

introduction of sanctions for those particular *corpora delicti* into the Code; second, reproduction of the Protocol's *corpora delicti* and corresponding sanctions in the national Penal Code.

The choice between these two methods depends on the social, national, historical, and legal experience of the particular State. In any case, if all States accede to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity of 1968, an integrated system of legal responsibility and the inevitability of punishment for such crimes could present a serious obstacle to tyranny and provide better protection for human rights in the context of armed conflict.

* * *

Any armed conflict inevitably damages the natural environment. Even the absolutely legal (from the viewpoint of international law) use of weapons and methods of warfare leaves in its wake large quantities of abandoned equipment, wrecked machinery, unexploded ordnance and destroyed natural and civilian targets. Dealing with the aftermath of war becomes an urgent need for the given State, and often for its neighbours as well.

At present, environmental protection has become one of the global problems faced by mankind. Because modern industry is having such a major impact on the environment and because virtually all countries have been affected by the high-technology revolution, ecological problems have become truly international. Most of these problems, originating in one particular country, have international repercussions, affecting the neighbouring countries, whole regions, continents, and sometimes the entire planet. The wizardry of modern technology makes it possible, on the one hand, to control a number of natural processes and avert certain natural disasters, but on the other, it can be used to damage the environment. The world has already witnessed many cases of dangerous environmental contamination resulting from both a criminal reluctance to take environmental protection measures and from deliberate infliction of damage in wartime. Naturally, in the latter case the damage is much more extensive.

Recently the world learned the full extent of the monstrous crimes committed by the United States against the environment of Indochina during the Viet Nam War. In the course of several years, the U.S. Air Force conducted full-scale ecological war-

fare, including artificial induction or intensification of rain to make roads impassable, cause dams to burst and flood extensive areas. Large tracts of forest were sprayed with herbicides and defoliants, and attempts were even made to set the forest on fire so as to wipe out all life there. As a result, in South Viet Nam alone, 25 per cent of the forests were destroyed, which to this day has a harmful effect on the ecological balance in the whole of Southeast Asia. Starting from 1961, over 4,900,000 acres of forest were systematically sprayed with a variety of chemical agents. For example, over a period of nine months in 1970, twenty-five provinces of South Viet Nam were sprayed with noxious chemicals, contaminating several hundred acres of previously arable land and poisoning some 185,000 residents. Altogether, from 1965 to 1973, the amount of ammunition used by U.S. forces in Indochina totalled 14,265,043 tons.[1]

The responsibility for the catastrophic ecological situation in Viet Nam, Laos and Kampuchea lies squarely with the USA, and these countries' claims are still on the international legal agenda.

The environment is also greatly damaged by tests of weapons of mass destruction, especially nuclear weapons. A striking example of this is the Bikini Atoll in the Marshall Islands in the Pacific. The Pentagon chose it as a site for its atomic bomb tests in 1946. After twelve years of tests the atoll, once an oasis, was turned into a desert. The same thing happened with Eniwetok, also in the Marshall Islands. In April 1948 it was the site of an atomic test, and in 1952, of a hydrogen bomb blast. Altogether, the 43 nuclear blasts conducted by the Pentagon on this atoll destroyed all vegetation and wildlife in the surrounding ocean as well as on the atoll itself.

* * *

The issue of responsibility of the aggressor State for eliminating the consequences of the hostilities, and also of compensating the victim State for the damage inflicted to its natural environment, emerged early in the 20th century. It was embodied in the Hague Conventions of 1899 and 1907 on the Laws and Customs of War as the principles of restitution and reparation.

[1] "Anti-Personnel Weapons", SIPRI, London, 1978, p. 26; Arthur H. Westing, Ed., "Ecological Consequences of the Second Indo-China War", SIPRI, Almqvist and Wiksell International, Stockholm, 1976.

For example, the 8th Hague Convention of 18 October 1907, states that during an armed conflict the belligerents shall undertake to limit, as far as possible, the time of action of automatic submarine contact mines and see to their timely defusing. After the termination of the armed conflict, the High Contracting Parties shall undertake to remove all unexploded mines (Art. V). The Hague Conventions prohibit the laying of unanchored sea mines if they are not equipped with automatic devices rendering them harmless an hour after the mine layer has lost control over them (Art. I).

The Hague Conventions clearly define the legal basis of actions to remove unexploded mines after the termination of hostilities and the duty to prevent damage that such mines might cause in the event of their non-elimination.

At a number of international forums, Libya, Viet Nam and several other countries raised the question of responsibility and compensation for damage arising from the non-elimination of the material remnants of war.[1]

In relation to Libya, responsibility lies with the States that took part in hostilities on the territory of present-day Libya during World War II. These States are parties to the Hague Conventions of 1907, under which they assumed relevant obligations. It should also be borne in mind that, since Libya is the legal successor of Italy, she is also a party to those Conventions. This entitles Libya to certain rights both in relation to Italy and in relation to all the other signatories of the Hague Conventions. Under such terms, a non-aggressor party has the legal right to claim compensation from the other parties in the event of non-elimination of remaining mines.

Legal practice in such cases is based on special international agreements or special provisions in general international agreements and treaties relating to the cessation of hostilities and termination of the state of war. For example, under the Peace Treaty of 1947, Italy, as co-aggressor, assumed the obligation of clearing Libyan territory of mines (Art. 72), while the terms of reparation were defined in Section I, Part VI, Annex A.

The Paris Agreement of Ending the War and Restoring Peace in Viet Nam (1973) stipulates that "the United States will remove, permanently deactivate or destroy all the mines in

[1] See, for example, the materials of the international symposium on material remnants of war (April 28-May 1, 1981), organized in Geneva by the UN Institute for Training and Research (UNITAR), the Libyan Institute for Diplomatic Studies, and the Swiss Institute of International Studies.

the territorial waters, ports, harbours, and waterways of North Viet Nam as soon as this Agreement goes into effect" (Ch. II, Art. 2). The claim stated in this agreement on the restitution of damage caused by the U.S. Armed Forces to the natural environment of Indochina, especially Viet Nam, is absolutely legitimate.

A number of international forums discussed the obligation of belligerent States to remove all mines remaining after the termination of hostilities, since they pose a threat to the natural environment. Hence the issue of responsibility and compensation.

The resolution on the United Nations Environment Programme adopted at the Thirtieth Session of the General Assembly states that the advancement of a number of newly independent countries is being held back because of the material remnants of armed conflicts imposed on these countries by the colonial powers. The resolution condemns the countries that refuse to remove these material remnants, in particular mines, and deems them responsible for the material and moral damage inflicted on these developing countries.

The resolution demands that the former belligerents should supply to the countries concerned, all relevant information about the mined areas, including maps indicating their location and type of mines. The resolution calls upon the countries whose actions have brought about this situation to compensate for the damage caused, both material and moral, and to take urgent steps to render technical assistance in eliminating these mines.

In removing mines and other remnants of war, account should be taken of their negative effect on the environment. All necessary steps should be taken to restore the environment to its original state. This important provision is based today not only on the general principles formulated early in this century, but on subsequent international legal instruments as well.

This concerns above all the Protocol of 1977 Additional to the Geneva Conventions of 1949 Concerning the Protection of Victims of War (Protocol I), which contains a special article making it binding upon the parties to an armed conflict to refrain from any acts that might have a widespread, long-lasting or severe effect on the natural environment and thereby damage the health or prejudice the survival of the population (Art. 55).

The Additional Protocol singles out a number of civilian objects in relation to which military actions should be restricted or banned, above all objects necessary for the survival of the

civilian population (Art. 54). Special protection against armed attack, including mining operations, shall be given to structures and installations containing dangerous forces, namely dams, dykes, and nuclear power stations (Art. 56).

The Additional Protocol also provides for a system of responsibility for non-compliance with the above provisions—Section II, "Repression of Breaches of the Convention and of This Protocol". In cases of grave breaches, the Protocol provides for the possibility of collaboration with the United Nations and the setting up of an international commission to establish the fact of such breaches.

In the event of violation of the Conventions or Protocols, the offending party must compensate for the damage. Each party is responsible for all acts committed by persons forming part of its armed forces, and no statutory limitations can apply to such violations.

A great step forward for the international community was the adoption, on 18 May 1977, of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. The terms "widespread, long-lasting, or severe effects" were interpreted in an agreed decision of the Disarmament Committee in connection with the draft Convention. According to that interpretation, "wide-spread" actions are those affecting areas of several hundred square kilometres; "long-lasting" means lasting several months; "severe" implies actions causing substantial or significant disruption of or damage to human life, or natural and economic resources. The parties to the Convention pledged not to employ environmental modification techniques that might have widespread, long-lasting or severe effects. The signatories undertook not to use for military purposes artificially induced natural disasters, such as earthquakes and tsunami; disrupt the ecological balance of any region; or modify any elements of the weather (clouds, precipitation, cyclones, storms, oceanic currents, the nitrogen layer, and the ionosphere). Of paramount importance is a uniform interpretation of the term "environmental modification techniques." Article II of the Convention interprets it as "any technique for changing—through the deliberate manipulation of natural processes—the dynamics, composition or structure of the Earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space".

Yet the Convention applies only to the consequences of manipulating the forces of nature, not the consequences of other means and methods of warfare, which are dealt with in the

Additional Protocol. Although some of these means do not exist yet, their development is theoretically possible.

On the other hand, the Convention does not rule out the use of scientific and technological achievements, specifically environmental modification techniques, for peaceful purposes, and points out the need for a broad international exchange of information in this field.

The international community has managed to agree on a verification mechanism to monitor the Convention's implementation. This is an important step forward in getting international agreements translated into reality. The verification mechanism consists of two parts: 1) a system of consultations and 2) a system of inquiry by the Security Council into complaints about violations of the Convention.

Article V provides for a procedure according to which the States parties to the Convention undertake to consult each other and cooperate in settling any issues that might arise with regard to the purposes of the Convention or in connection with the implementation of its provisions. This includes making use of the services of relevant international organizations and of an Expert Consultative Committee, which will be set up expressly for that purpose. The Consultative Committee is to be convened by a depository within one month after receiving the request of any State. The Committee will inquire into the circumstances of the case under claim and submit its expert opinion. On matters of procedure, the Committee will adopt decisions, wherever possible, on the basis of consensus, or at least by a majority vote of those present and participating in the voting. No voting will be held on substantive questions.

A complaint lodged with the Security Council must contain all pertinent information and all possible proof of the claim. The Security Council will conduct an inquiry in accordance with the procedure stipulated in the UN Charter and inform the States parties of its findings.

Paragraph 5 of Article V states: "Each State Party to this Convention undertakes to provide or support assistance, in accordance with the provisions of the Charter of the United Nations, to any State Party which so requests, if the Security Council decides that such Party has been harmed or is likely to be harmed as a result of violation of the Convention."

The Convention is the first comprehensive international legal instrument intended to promote protection of the environment. It is yet another important step in strengthening world

peace and security, and undoubtedly a serious obstacle to continued escalation of the arms race.

Of fundamental importance in solving the problem of removal of the material remnants of war are Articles 7 and 8 of the Convention on Prohibitions or Restrictions of Use of Certain Conventional Weapons which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (1981) and the so-called Guiding Principles of Registration.

Article 7 makes it binding upon the participants in an armed conflict to register and disclose information on the location of mines, minefields, and booby traps. Immediately after the cessation of hostilities, the parties to the conflict must take all the necessary and appropriate measures, including the use of registration documents, to protect civilians from mines, minefields, and booby traps. If the armed forces of the belligerents are not located at the time on enemy territory, they must provide to each other and to the UN Secretary-General all information available on the location of mines, minefields, and booby traps on enemy territory. When a UN force or mission is sent to the area of hostilities, such information is provided to the person in charge of the UN force or mission.

Finally, the parties can, by mutual agreement, make public the location of the mines, minefields, and booby traps. This can be done, for example, in an armistice agreement.

Article 9 of the Convention, which deals with international cooperation in clearing minefields and defusing separate mines and booby traps, makes it binding upon the parties to the conflict after the cessation of hostilities to seek an argeement between themselves and also, in certain situations, with other States and international organizations, concerning information and also technical and material assistance, including joint operations necessary for clearing minefields and defusing separate mines and booby traps planted during the armed conflict, or rendering them safe by other means.

The wording of Article 9 reflects, among other things, the viewpoint of the Libyan delegation expressed at the UN Conference on the Prohibition or Restriction of the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.

The Guiding Principles stipulate that whenever large-scale use of minefields and booby traps is planned in advance, maps, diagrams and other registration documents must indicate the exact location of booby traps or the location and size of minefields; such areas must be indicated in relation to an agreed

geographic point of reference. All relevant information must be registered in a way that would facilitate identification of areas containing minefields, separate mines and booby traps.

The trend towards increased cooperation in mine clearance that emerged more than half a century ago is now being embodied in binding international legal instruments. Accordingly, the question has been raised of the legal responsibility of any party that refuses to cooperate in mine clearance. The elimination of mines after the termination of an armed conflict has today become an international legal obligation. The parties to an armed conflict are held responsible for damage caused both by violation of prohibitory norms for mine-laying and by failure to remove their mines after the termination of hostilities. In other words, it is a question of responsibility for damage caused by a criminal offense.

However, the general theory of international law also permits the claiming of compensation for damage caused by legitimate activities.[1] In such cases, only material liability is incurred. In private international law, it is usually referred to as "the duty to compensate for material damage", whereas public international law calls it "restitution" and, in a number of cases, "reparation", which latter term particularly applies to situations after the termination of hostilities and conclusion of a peace treaty. Crimes of commission or omission incur political, moral and material liability. Actions causing material damage incur the obligation to compensate for it.

Presentation of claims for damage is a direct result of the emergence of liability. Liability can emerge with the imputation of fault where an offense has been committed, or independently where material damage has been caused without violation of international law.

When a claim for compensation is made, the problem arises of determining the extent of the damage. An analysis of international agreements regulating the liability of States, including the relevant draft agreement prepared by the International Law Commission, prompts the conclusion that the following methods

[1] See: P. Guggenheim, "Les principes de droit international public"—In: *Recueil des Cours*, Leiden, 1952, Vol. 80, pp. 142-143; E. Enstatihiades, "Le sujets du droit international el la responsabilité internationale" in: *Recueil des Cours*, 1953, Vol. 84, p. 429; P. Bissonette, *La satisfaction commende de réparation en droit internationale*, Geneva, 1952, p. 77; R. Zana, *La responsabilité Internationale des Etats pour les actes de négligence internationale des Etats et son application en matière d'actes Législatifs*, Istambul, 1950, pp. 15, 36.

are used in such cases: determination of the material damage by the victim; joint determination of material damage by parties by agreement reached through consultations; determination of material damage by analyzing documents and consulting experts in a court trial or arbitration.

International law does not provide for any method of determining the exact sum to be paid in compensation for damage. Quite often it is determined by compromise between the parties. In determining the amount of compensation, the parties to an international dispute usually refer to the principles and rules of civil law, with amendments reflecting certain traditions of international law.[1] Under international law, statutory limitations do not apply to damage caused to property or the environment in the course of military operations or as a result of non-removal of material remnants of war.

A good example is the claims made by the Swiss commune of Bourg Saint Pierre to the French Government for compensation for damage inflicted in 1808 by Napoleon's army when it was crossing the mountain pass of Grand-Saint-Bernard. The army caused damage to the road and the neighbourhood amounting to 45,000 francs. In 1828, King Louis XVIII of France sent 15,000 francs in compensation. Now, 153 years later, in 1981, the Swiss laywer Victor Dupuis was delegated by the commune to exact from the French Government the remaining 30,000 francs, which today amount to 60 million Swiss francs.

On 26 November 1968, a special Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity was signed. This Convention gave statutory force to a long-standing custom of international law.

In accordance with the legislative practice established by the Anglo-Saxon legal system and other European legal systems, compensation must be paid for damage to or the total loss of property, for direct property damage as a consequence of lost opportunity, and for moral damage, which includes physical and moral suffering (actual or imaginary) caused by unlawful or wrongful acts of the offending party.

As a rule, the amount of compensation for moral damage is established by a court of law. The legal systems of some countries specify cases where compensation is paid for moral damage, while in other countries there is no such stipulation. International law does not in principle exclude material compen-

[1] UN Doc. A/CN. 4/III, p. 68.

sation for moral damage, which can be specifically stipulated in an international agreement.

Damage caused by unlawful acts violates the rights of the victim, which fact is an essential condition for claiming compensation. Compensation can also be demanded in cases where lawful actions cause damage in excess of what is necessary for achieving the desired goal. In other words, it is a question of the offending party abusing its rights. In international humanitarian law, this is expressed in the *principle of proportionality*, that is, the requirement that a military objective must not be achieved at the cost of losses inflicted on the civilian population and civilian targets that are disproportionately high compared to the military effect.

Special consideration should be given to the question of damage caused in a state of dire necessity. In international humanitarian law, this is expressed in the *principle of military necessity*. Attitudes to this principle vary, but it is recognized by positive law and reaffirmed in the Additional Protocols of 1977 to the 1949 Geneva Conventions Concerning the Protection of Victims of War. However, the Geneva Conventions and Additional Protocols stipulate that the principle of military necessity applies only to certain specific cases and is usually limited to the principle of proportionality.

All this prompts the conclusion that in cases where damage is caused to civilian targets and the population in military necessity, such damage cannot in itself serve as sufficient grounds for the emergence of liability.

International humanitarian law has an important principle based on general international law: *liability of a State for damage (loss) caused by unlawful acts of its officials*, in this particular case, by its servicemen. This principle should be borne in mind when considering the legality of claims for compensation for damage sustained as a result of military operations or failure to remove the material remnants of war, and also damage caused to the environment.

A number of jurists (for example, F. V. Garcia-Amador, Yu. M. Kolosov, N. A. Ushakov) maintain that international material liability is incurred not only in the event of violation of specific legal norms, but in fact in the event of any damage caused by one State to another.

Claims for compensation may be considered valid even in the absence of an obvious violation or non-observance of treaty obligations, since the causing of damage to another State under all circumstances constitutes a breach of universally recognized

principles and standards of international law. Prohibition of the causing of damage is the customary rule of international law, with the exception of certain particular cases arising in the course of an armed conflict which are specially defined in international agreements.

A study sponsored by the United Nations Environment Programme (UNEP) examined the impact of the material remnants of war on the environment.[1] The nature of present-day armed conflicts makes the influence of such war remnants on the global environment especially dangerous. The realization of this fact has eventually led to the drawing up of international legal instruments banning environmental modification for military purposes. Of no less importance is the issue of removing the material remnants of war that are harmful to the environment. The time has come to draw up a set of mandatory rules and principles that would be binding on all States. The urgent need for such rules becomes all the more evident if one considers the aftermath of the Viet Nam war, the material remnants of which have greatly damaged and to this day continue to damage the environment not only in Viet Nam itself, but in other countries in the region, too. And, for that matter, the non-removal of war waste violates the principle of the permanent sovereignty of State over their natural resources.[2]

The trend towards increasing the liability for damage to the environment—and it is universally recognized that non-removal of war waste does constitute an environmental hazard—has been reflected in a number of international agreements and arbitration decisions (for example, Trail Smelter Arbitration 1938, 1941, Lac Lanoux, the 1971 Convention on International Liability for Damage Caused by Space Objects, the 1969 Brussels Convention on Civil Liability for Poisoning the Environment with Hydrocarbon, and the 1979 Convention on Long-Range Transboundary Air Pollution).

Also notable is the Soviet initiative advanced in 1980 at the Thirty-Fifth Session of the UN General Assembly in a document entitled "Historical Responsibility of States for the Preservation of Nature for Present and Future Generations" and an initiative put forward by a number of developing countries—the draft World Charter for Nature. These two

[1] UN Doc. UNEP/GC. 6/18, 2 February 1978.

[2] See: M. A. Miggiani, *The Aftereffects of War Waste Left by Belligerent States During the Second World War on Libyan Soil*, Geneva, 1980, p. 13.

initiatives underscore the intimate connection between the need for international cooperation in nature conservation and efforts to halt the arms race. Furthermore, the Soviet Union maintains that environmental protection is not just an ecological problem, but one closely associated with efforts to advance peace and social progress and to create better conditions for the free development of every individual and all nations.

These initiatives make it possible to raise the level of international cooperation in restitution of damage already caused to the environment and preventing such damage in the future. Presenting an optimistic view of the future of mankind, these proposals should have a positive impact on many issues of environmental protection. They show the serious concern of the Soviet Union and other progressive forces over the global implications of any damage to the environment and underscore the duty of all nations to protect it with every means available, above all through concerted international efforts.

Underlying all actions aimed at removing the material remnants of armed conflicts should be the principle of international cooperation based on the liability of States whose actions or inaction have damaged the environment and their duty to compensate for such damage.

* * *

The existing system of international liability for violation of treaties banning or restricting the use of certain types of weapons constitutes an important element of political and international legal guarantees of such bans or restrictions and of the exercise of human rights and fundamental freedoms. One feature of this system of principles and rules and its current trends is the expanding scope of protection. This reflects a growing threat of the use of new types of weapons for the population, civilian targets and the natural environment.

The global threat posed by such crimes naturally points to the need to bring the offenders to justice now, immediately. This should be done not only for the sake of punishment, but to prevent similar crimes in the future, which involves not only drawing up national penal legislation stipulating liability for such crimes and increasing the liability of national governments for conniving at crimes perpetrated by their military, and also developing international cooperation in this cause among all States.

Many jurists from different countries agree on the need to set up an international criminal tribunal to try those who have committed war crimes and crimes against humanity. This idea may promote the solution of the problem of liability for grave international crimes in conditions of armed conflict.

Naturally, the structure and activity of such a tribunal must be based on the principles of the Nürnberg and Tokyo Tribunals (primarily Section II), which have been endorsed by General Assembly resolutions and other international agreements defining liability for crimes against peace, war crimes, and crimes against humanity, for example, the Convention on the Prevention and Punishment of the Crime of Genocide (1948) and the International Convention on the Elimination of All Forms of Racial Discrimination (1965). Such tribunals could be set up as part of a system of regional security, which would not only act to prevent wreckless military actions in armed conflicts, but would promote legality and justice.

Closely associated with the definition of aggression, which was adopted by the UN General Assembly in 1974, is the question of such a tribunal's competence to examine individual liability for crimes against peace (the planning, preparing, unleashing, or waging of an aggressive war or a war in violation of international treaties, agreements or assurances, or involvement in a common plan or conspiracy aimed at effecting any of the above actions).

All the crimes listed in Art. 6 of the Charter of the Nürnberg Tribunal must come within the jurisdiction of such an international tribunal; the parties to a trial can only be subjects of international law (States, peoples fighting for independence, and international organizations). The tribunal's composition must be determined by the signatories to the treaty that sets it up. Each signatory will appoint one member and his deputy, who would be recognized authorities in legal matters. A quorum would require the presence of all the members or their deputies. A chairman would be elected for each session in alphabetical order. All decisions, including verdicts of guilty or non-guilty, must be taken by a two-thirds majority. The signatories will draw up the tribunal's rules of procedure. All these points will, of course, require further study and discussion.

The issue of liability for violations of human rights and fundamental freedoms poses a number of specific questions of international legal regulation. Contemporary international law demands that these specific questions be settled in accordance with the general principles of inter-State relations.

In the drive of democratic forces worldwide for peace, security, democracy and social progress, contemporary international law provides a potent means of consolidating these forces, restoring justice and legality, and ensuring the free exercise of human rights and fundamental freedoms.

§ 3. Ways and Means of Promoting Within the United Nations the Effective Exercise of Human Rights and Freedoms

In considering alternative ways and means of promoting within the United Nations system the effective exercise of human rights and fundamental freedoms, in 1977 the General Assembly adopted Resolution 32/130, which in effect outlined the principles of UN activity in this field. The resolution defines the two principal directions of international cooperation in promoting human rights: 1) promotion of human rights and fundamental freedoms in all countries, and 2) efforts to combat mass-scale, systematic, and flagrant violations of these rights and freedoms. The resolution underscores the importance of international treaties in reaching these objectives; it also lists the most flagrant cases of mass-scale human rights abuse. The resolution reaffirms the universally accepted principle that the UN promotes international cooperation in encouraging respect for human rights, while specific steps to ensure these rights are entrusted to each particular State and come within their internal jurisdiction. The resolution reiterates that international cooperation in promoting human rights must be based on scrupulous observance of all the principles of the UN Charter, in particular the principle of respect for state sovereignty and non-interference in domestic affairs. The document also points out that priority must be given to efforst to prevent flagrant, systematic and mass-scale violations of human rights, which fact reflects the international community's mounting concern over the continued existence of apartheid, racial discrimination, and refusal by certain States to recognize the right of peoples to self-determination.

The existing system of international monitoring of the observance of human rights and freedoms has demonstrated that complaints by individuals about human rights abuses and their examination by international bodies is not an effective method of international human rights protection, since no inter-

national organization can substitute for national bodies concerned with human rights. In fact, the functioning of such international bodies in Western Europe has so far demonstrated the opposite effect. In the first place, the supragovernmental status of such bodies is an illusion, and in the second, such bodies cannot deal with complaints from private individuals. For example, between 1975 and 1977, the European Commission on Human Rights received complaints about human rights abuses from four Algerians, one Cypriot, two Spaniards, ten Indians, one Iranian, one Iraqi, two Japanese, one Jordanian, one Kenyan, one Kuwaiti, one Lebanese, two Malays, five Moroccans, two Mexicans, sixteen Nigerians, eight Pakistanis, one Senegalese, one Sierra Leonean, three Sinhalese, one South African, four Syrians, eight Tunisians, six Turks, twenty-two Yugoslavs, and two Zaireans. Yet the majority of these complaints were turned down.

Here again we are confronted with the major problem of how international law relates to national legislation and whether an individual can be considered a subject of international law. As experience shows, an international agreement can come into force on the territory of a particular State only if that State's supreme government authority approves (ratifies) that agreement, thus giving it the force of a national legislative act. Only then will that country's natural persons, juridical persons and State establishments enjoy the rights and assume the responsibilities under that international agreement. Dozens of examples can be cited of individuals being brought to justice for violation of international agreements ratified by their country, and of natural and juridical persons receiving rights under an international agreement, which they did not previously enjoy under national legislation. Yet this practice never made the individual a subject of international law. The individual enjoys rights and assumes responsibilities under an international agreement only when it has become part of national legislation. So with the increase in the number of international agreements on human rights and fundamental freedoms, there is now a need to draw up a uniform set of principles of correlation between international and national law.

The time that has passed since the Final Act of the Conference on Security and Cooperation in Europe has demonstrated the viability of its provisions and principles. On the other hand, it has revealed the obstacles put up by reactionary forces opposed to détente, especially to cooperation in the humanitarian field.

The socialist countries maintain that peace and social progress provide favourable conditions for developing free contacts between people and promoting human rights and freedoms, as stipulated in such major international legal instruments as the Universal Declaration of Human Rights (1948) and the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights (1966). This position is in full accord with the obligation assumed by each signatory to the Helsinki Final Act "to make its contribution to the strengthening of world peace and security and to the promotion of fundamental rights, economic and social progress and well-being for all peoples". The socialist countries have never denied that international cooperation in the humanitarian and other fields figures prominently in the Final Act, but it would be wrong to see the importance of this document only in the "third basket", as it has been repeatedly done in the Western media. Each provision of the Final Act should be seen in the context of all the other provisions—that is the only way any international instrument can be properly interpreted. That is why international cooperation in the humanitarian fields must promote respect for "human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distincion as to race, sex, language or religion." On the other hand, respect for human rights and fundamental freedoms as a principle of international law can be exercized only in conformity with and on the basis of international treaties and agreements, both bilateral and multilateral. Yet certain vociferous circles in the West are demanding that the socialist countries should immediately modify their national legislation to promote some sort of abstract human rights and freedoms in violation of existing international agreements, which would be flagrantly at odds with the Final Act and international law as a whole.

This fact should be borne in mind when considering the prospects for international cooperation in promoting human rights and freedoms, especially in conditions of armed conflict, where the threat of arbitraty treatment and coercion is most real. This concern for the well-being of man has been expressed in the 1977 Protocols on International and Non-International Armed Conflicts Additional to the 1949 Geneva Conventions Concerning the Protection of Victims of War, which provide increased protection for human rights in the context of armed conflict.

Recent advances in science and technology have also undoub-

tedly affected the state of human rights and freedoms and their protection within the boundaries of each State and on the international scene. It is a new and very serious problem of international law. It has been taken up by the United Nations on the instructions of the International Conference on Human Rights held at Teheran in 1968. The General Assembly adopted on 19 December 1968 Resolution 2450 (XXIII), which instructed the Secretary-General to report on the impact of technological progress on human rights.

The next step in this direction was the adoption by the General Assembly on the Soviet Union's initiative of a Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind (1975).

This problem is also constantly raised at non-governmental forums. The world public is seriously worried that in a number of industrialized countries technological achievements are being used to persecute democratic forces—for example, various bugging devices, telephone tapping, and concealed camera filming. Mounting concern is also expressed over certain new uses of computer technology in information banks and dangerous developments in certain branches of medicine, genetics, and biochemistry. For example, in 1975 an international scientific conference in the United States declared a moratorium on all research in genetic engineering pending the development of reliable guarantees that would protect future generations against possible undesirable effects.

At the same time, scientific and technological progress gives the international community an effective means to assert human dignity, international peace and well-being for all peoples and promote the free development of every individual's talents and abilities.

Thus it becomes clear that any foreign policy move and any measure taken by an international organization should take into account all the above-mentioned aspects of the relationship between technological progress and human rights.

The top priority areas in this respect include the following: environmental protection; human rights; development of new principles for scientific information exchange on an international level; development of international technological exchange apart from trade, including exchange of technical concepts and patents.

In conformity with established UN practice, General Assembly resolutions have always been used as a basis for the concrete

formulation of specific principles, which are usually expressed in a special resolution or covenant.

Apart from already existing treaties, special international agreements could be drawn up on the following problems: a special international convention on the prevention and punishment of persons and organizations guilty of using technological achievements to the detriment of human rights and freedoms embodied in national constitutions and international treaties and agreements; a special international convention providing for effective measures, including legislative ones, to prevent the use of technological achievements to discriminate between people on the basis of race, sex, language or religion; a special General Assembly declaration banning the use of technological achievements in violation of man's right to live in peace; a special General Assembly declaration providing for assistance to the developing countries in using scientific and technological achievements to promote the exercise of social, economic and cultural human rights by the people of those countries.

United Nations bodies must get more actively involved in the worldwide effort to combat the growing discrimination against migrant workers. To this end, in addition to other measures, international bodies should draw up a special convention on the rights of migrant workers, attaching special importance to protection against discrimination and providing for a special procedure to render assistance to victims of racial descrimination. A special multilateral consular convention should also be concluded between the countries whose citizens constitute the bulk of migrant workers and countries where the latter seek employment. Still high on the international agenda is the issue of concluding a multilateral convention banning racial discrimination against immigrants or foreign persons seeking entry into a given country, since the immigration regulations of a number of countries (for example, the USA and Great Britain) contain quotas limiting the number of immigrants from Asia and Africa.

There is also an imperative need for a special convention on the mandatory extradition of persons guilty of the crimes of racism and racial discrimination to be tried in the country where they committed these crimes and which would qualify such acts as criminal offenses regardless of their motive.

The UN could support the initiative and continue the drawing up of an international convention to combat the use of mercenaries in warfare.

All States should support UN efforts to draw up a convention banning the import of raw materials from countries under racist regimes in southern Africa, an international convention against apartheid in sports, and a convention on international criminal liability of persons guilty of breaching the right of peoples to self-determination, stipulating a procedure for rendering assistance to the victims of racism and apartheid and protecting their rights in each particular instance.

The cause of victims of racism and racial discrimination would be greatly advanced if the international community could block the commercial links of transnational corporations and other business circles with racist regimes. For this purpose, a special convention or a section in a more general convention should be drawn up, providing for necessary measures to stop the activity of transnational corporations in countries where there is any form of violence, racial discrimination, colonialism, or foreign domination.

The policies pursued by racist regimes lead to the restriction and eventual destruction of the ethnic cultural heritage. Therefore, an international instrument should be drawn up on ways to help the African peoples struggling under the yoke of racial regimes to preserve their cultural heritage, establish contacts with other cultures, and encourage their continued creative endeavours.

The freedom of speech and opinion, as interpreted by Western bourgeois ideologues, makes it possible to conduct brazen racist propaganda in a number of countries. This creates obstacles to efforts to ensure the free exercise of human rights and freedoms and to combat violations of such rights. Such an interpretation of the freedom of speech and opinion contained in the Universal Declaration on Human Rights flies in the face of that very Declaration, the UN Charter, and many other international treaties and agreements committing all States to do their utmost to stop or prevent any action of a racist or fascist nature and to bring to justice persons guilty of such offences against humanity. A number of Western countries continue to render economic and military aid to racist regimes, and in particular to the white minority régime in southern Africa, in direct violation of UN resolutions and decisions. It is therefore necessary to consider the adoption of a special procedure to ensure compliance with UN resolutions and decisions on questions of combatting racism and racial discrimination, including resorting to the authority of the Security Council.

Also high on the United Nations agenda is the need to dismantle the inequitable international economic order and compensating for its adverse effects on human rights and freedoms in the developing countries; issues of scientific and technological progress; and control over the use of technologies capable of encroaching on man's right to live in a healthy environment, to mention just a few problems.

* * *

International humanitarian law constitutes a system of principles and rules regulating the conduct of States in international relations—rules that are binding on all States and that constitute a broad democratic basis for the progressive forces, struggle for world peace and security, for the protection of human rights and freedoms, for man's right to live in peace and freedom, and to be protected against arbitrary treatment and coercion. Rejection of these principles or their violation incurs international liability of States and international criminal liability of individuals guilty of such acts.

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